Supreme Court of the United States

OCTOBER TERM, 1970

No. 5175

ADOLFO PEREZ, ET UX.,

Petitioners,

—v.—

DAVID H. CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE DIVISION, ARIZONA HIGHWAY DEPARTMENT, ET AL.

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

INDEX

RELEVANT DOCKET ENTRIES

Plaintiffs' Complaint was filed August 2, 1968.

Plaintiffs' Motion for Preliminary Injunction together with supporting affidavits were filed August 2, 1968.

Defendants' Motion to dismiss was filed September 11, 1968.

Plaintiffs' Opposition to Defendants' Motion to Dismiss was filed September 20, 1968.

The District Court's Order granting Defendants' Motion to Dismiss was filed September 26, 1968.

Plaintiffs' Notice of Appeal to the United States Court of Appeals for the Ninth Circuit was filed October 14, 1968.

United States Court of Appeals for the Ninth Circuit's Opinion was dated and filed January 26, 1970.

Motion for Re-hearing in the United States Court of Appeals for the Ninth Circuit was filed February 9, 1970.

Denial of Motion for Re-hearing by the United States Court of Appeals for the Ninth Circuit was filed on February 18, 1970.

Notice of Appeal to the United States Supreme Court was filed April 15, 1970.

Petition for writ of certiorari and motion to proceed in forma pauperis was filed in this Court on April 27, 1970.

This Court's Order granting certiorari and motion to proceed in forma pauperis was dated and filed October 12, 1970.

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civ-2478 Tuc.

[File Endorsement Omitted]

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and EMMA PEREZ for her separate self, PLAINTIFFS

vs.

DAVID H. CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE DIVISION, ARIZONA HIGHWAY DEPARTMENT, STATE OF ARIZONA and D. H. HASTINGS, SUPERVISOR, FINANCIAL RESPONSIBILITY SECTION, MOTOR VEHICLE DIVISION, ARIZONA HIGHWAY DEPARTMENT, STATE OF ARIZONA, DEFENDANTS

COMPLAINT—Filed August 2, 1968

I

This is an action for injunctive and declaratory relief sought by plaintiffs to secure rights, privileges and immunities established by the Thirteenth and the Fourteenth Amendments to the Constitution, as well as an action for declaratory relief on the basis that the State statute in question violates Art. VI, cl. 2 as well as Art. I, Sec. 10 of the United States Constitution.

II

That this Court has jurisdiction by virtue of Title 28, U.S.C., Section 1334 and 11 U.S.C., Section 11, as well as Title 28, U.S.C., Section 1343, together with the provisions of Title 42, subchapter I, U.S.C., particularly Section 1983 of Title 28 for the redress of the deprivation by defendants, the due process of law and the equal protection of laws guaranteed to the plaintiffs by the Fourteenth Amendment of the United States Constitution. Declaratory relief is sought herein under Title 28, U.S.C., Sections

2201 and 2202 and a temporary and permanent injunction against the defendants under Title 28, U.S.C., Sections 2281 and 2284 and a three-judge Federal Courts is requested. Injunctive power is also conferred upon the Court by virtue of 28 U.S.C. 1651.

III

That plaintiffs, husband and wife, are residents of this judicial district. That they are citizens of the United States and citizens of the State of Arizona.

IV

That defendant, DAVID H. CAMPBELL, is the Superintendent of the Motor Vehicle Division of the Arizona Highway Department, State of Arizona, and that defendant, D. H. HASTINGS, is the Supervisor of the Financial Responsibility Section of the Motor Vehicle Division, Arizona Highway Department, State of Arizona.

V

That on July 8, 1965, in the City of Tucson, Arizona, plaintiff ADOLFO PEREZ, alone, while driving his automobile, collided with another automobile owned by a Leonard Pinkerton and operated by Janice Pinkerton, a minor.

VI

That on the 6th day of September, 1966, a complaint was filed in the Superior Court of the State of Arizona, in and for the County of Pima, Case No. 97569, by the Pinkertons against the plaintiffs, as husband and wife.

VII

That on October 31, 1967, plaintiffs confessed judgment to the Pinkertons and an order accepting the confession of judgment and judgment against the plaintiffs in the amount of $2,425.98, plus court costs in the amount of $25.90, was duly entered on November 8, 1967.

VIII

That on November 6, 1967, plaintiffs, husband and wife, each filed a Petition in Bankruptcy in this Court and that each of the plaintiffs was adjudicated a bankrupt in Case Nos. B-7925-Tuc. and B-7926-Tuc.

IX

That on July 8, 1968, an order was entered as to each of the plaintiffs, discharging each of them from all debts and claims that were provable by the Bankruptcy Act against the estates of each of the plaintiffs.

X

That the debt and judgment owed to the Pinkertons was duly scheduled in the schedules of each of the plaintiffs, with the creditor's address.

XI

That on March 13, 1968, the plaintiffs were served with notice by the defendants that pursuant to Arizona Revised Statutes, Section 28-1162 A, which provides that:

> "The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and section 28-1165."

That on June 10, 1968, each of the plaintiffs turned in the driver's license to the defendants.

XII

That despite the adjudication and discharge in bankruptcy of each of the plaintiffs, Arizona Revised Statutes, Section 28-1163 B provides that:

> "B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judg-

ment debtor from any of the requirements of this article."

XIII

That A.R.S. Section 28-1163 B is in direct conflict with the Bankruptcy Act and is in violation of the Supremacy clause, Article VI, cl. 2 of the United States Constitution.

XIV

That Arizona Revised Statutes, Section 28-1162 further provides in part B that:

"B. If the judgment creditor consents in writing, in such form as the superintendent may prescribe, that the judgment debtor be allowed license and registration or nonresident operating privilege, and the same may be allowed by the superintendent in his discretion, for six months from the date of the consent and thereafter until the consent is revoked in writing, notwithstanding default in the payment of the judgment, or of any installments thereof prescribed in Sec. 28-1165, provided the judgment debtor furnishes proof of financial responsibility."

XV

That A.R.S. 28-1162 B is in direct conflict with the Bankruptcy Act and is in violation of the Supremacy clause, Article VI, cl. 2 of the United States Constitution by giving the judgment creditor the sole discretion of determining if and when the driving licenses may be restored to each of the plaintiffs.

XVI

That A.R.S. 28-1163 B violates the Thirteenth Amendment of the United States Constitution for the reason that it enslaves and forces each of the plaintiffs to remain in perpetual involuntary servitude until the judgment is paid or else the right to drive on the public highways as well as the right to register a motor vehicle in Arizona would be perpetually denied to each of the plaintiffs.

XVII

That each of the plaintiffs is financially unable to pay money to satisfy the judgment in any manner whatsoever. That as a result of their poverty, they are now perpetually denied their right to drive on the public highways and in registering any automobile. That A.R.S. Section 28-1162, singly, and in conjunction with Section 28-1163 B, in denying them this right is an invidious discrimination and violates the equal protection of laws as guaranteed under the Fourteenth Amendment of the United States Constitution.

XVIII

That in forfeiting perpetually each of the plaintiffs' right to drive on public highways and in registering any motor vehicle until payment of judgment, A.R.S. 28-1162, singly, and in conjunction with A.R.S. 28-1163 B, operates as a Bill of Attainder prohibited by Article I, Section 10 of the United States Constitution as well as a denial of due process of law under the Fourteenth Amendment of the United States Constitution.

XIX

That as to plaintiff, EMMA PEREZ, A.R.S. 28-1162, singly, and together with A.R.S. 28-1163 B, in suspending her right to drive and in prohibiting her from registering any motor vehicle, deprives her of the due process and equal protection laws as guaranteed to her by the Fourteenth Amendment for the reason that she was not at any material times negligent in the operation of an automobile which has resulted in the judgment. That her part in the judgment was solely that of the wife of the negligent driver, plaintiff, ADOLFO PEREZ.

XX

That as to the plaintiff, EMMA PEREZ, A.R.S. 28-1162, singly, and in conjunction with A.R.S. 28-1163 B, in forfeiting perpetually her right to drive and to register a motor vehicle, is a Bill of Attainder as forbidden by Article I, Section 10 of the United States Constitution.

XXI

That each of the plaintiffs is now suffering daily irreparable injury and harm as a result of the actions of the defendants, and that plaintiffs have no other plain, speedy and adequate remedy at law from this injury and harm other than invoking equity in obtaining temporary and permanent injunction against the defendants.

WHEREFORE, plaintiffs pray as follows:

1. That this Court assume jurisdiction and convene a three-judge Court pursuant to Title 28, U.S.C., Sections 2281 and 2284.

2. That this Court set a date for hearing on plaintiffs' motion for preliminary injunction pursuant to Title 28, U.S.C., 2284, ordering the defendants to show cause, if any they have, why the drivers' licenses and right to register a motor vehicle should not be restored to the plaintiffs, husband and wife, and to plaintiff, EMMA PEREZ, as her separate self, pendente lite.

3. That this Court enter a declaratory judgment pursuant to Title 28, U.S.C., Sections 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure, declaring that Arizona Revised Statutes, Section 28-1162, singly, and together with Section 28-1163 B, violates the rights, the due process of law and the equal protection of laws as to the plaintiffs and plaintiff, EMMA PEREZ, secured by the Fourteenth Amendment to the Constitution of the United States; that they constitute slavery and involuntary servitude in violation of the Thirteenth Amendment of the Constitution of the United States, as well as being violative of Article 1, Section 10 of the United States Constitution as a Bill of Attainder. That A.R.S. 28-1163 B be also declared as violative of the Supremacy clause, Article VI, cl. 2 of the United States Constitution.

4. That a permanent injunction be entered against the defendants, their successors to office, agents and employees to restore the driving licenses of the plaintiffs and plaintiff, EMMA PEREZ, and also the right of the plaintiffs and plaintiff, EMMA PEREZ, to register a motor vehicle in the State of Arizona.

5. That this Court grant the plaintiffs and plaintiff, EMMA PEREZ, any other and further relief as this Court may deem to be just and proper.

/s/ Adolfo Perez

/s/ Emma Perez

LEGAL AID SOCIETY OF THE PIMA COUNTY BAR ASSOCIATION

By: /s/ Anthony B. Ching
ANTHONY B. CHING
Chief Trial Counsel
112 West Pennington Street
Tucson, Arizona 85701
Attorneys for Plaintiffs

[*Duly sworn to by Adolfo Perez and Emma Perez, jurats omitted in printing*]

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civ-2478 Tuc.

[Title Omitted]

MOTION FOR PRELIMINARY INJUNCTION—Filed August 2, 1968

The plaintiffs and the plaintiff, EMMA PEREZ, for her separate self, move this Court for a preliminary injunction commanding the defendants, their agents, successors and employees, pending the final determination of this action, to restore and reinstate to the plaintiffs and to plaintiff, EMMA PEREZ, their drivers' licenses and the right to register a motor vehicle in the State of Arizona.

The grounds of this Motion, more fully set forth in the verified Complaint and the attached affidavit of plaintiffs, ADOLFO PEREZ and EMMA PEREZ, are that:

(a) Unless enjoined by this Court, the defendants will continue to deny to plaintiffs and to plaintiff, EMMA PEREZ, the right to drive and to register a motor vehicle in the State of Arizona.

(b) Such denial by the defendants has resulted and will continue to result in immediate and irreparable injury, loss and damage to the family life, well-being and physical and psychological health of the plaintiffs and of plaintiff, EMMA PEREZ, as more particularly appears in the affidavit attached hereto.

(c) The issuance of a preliminary injunction herein will not cause undue inconvenience or loss to the defendants or the public, but will prevent irreparabile injury to the plaintiffs.

Respectfully submitted,

LEGAL AID SOCIETY OF THE PIMA COUNTY BAR ASSOCIATION

By: /s/ Anthony B. Ching
Chief Trial Counsel
112 West Pennington Street
Tucson, Arizona 85701
Attorneys for Plaintiffs

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CIVIL NO. .....

[Title Omitted]

AFFIDAVIT OF PLAINTIFF EMMA PEREZ IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

EMMA PEREZ, being first duly sworn upon her oath, deposes and says:

1. That she is the wife of plaintiff ADOLFO PEREZ and the mother of HECTOR PEREZ, age 17; GILBERT PEREZ, age 14; LAURA PEREZ, age 9, and DANIEL PEREZ, age 6.

2. That she is not gainfully employed other than as a housewife; that since the suspension of her driver's license and automobile registration the following has occurred.

3. That the two older children attended Pueblo High School, one and one-half miles from her home; that they had to walk to and from school due to her inability to drive them to school. That LAURA PEREZ attended Van Buskirk School, one mile from home; that LAURA's transportation to and from school is furnished by friends and relatives, and that at times she had to walk the distance, which caused her to have nose bleeding. That LAURA has suffered from nose bleeding for some four years and the walking in the summer heat had aggravated her condition.

4. That in shopping for the family she usually walks to the stores and at times she has to take a bus. That this often results in her being unable to purchase in large quantities and also to go to purchase supplies at the many discourt stores remote from her home. That in going to the doctors for her children she has to rely either on rela-

tives or the public transportation and at times she must walk with the children. That she must resort to walking most of the other times when she must go out on business for herself and her family.

5. That said suspension has caused affiant great harm and inconvenience and that she is suffering irreparable injury.

/s/ Emma L. Perez
EMMA PEREZ

SUBSCRIBED AND SWORN TO before me this 2nd day of August, 1968.

/s/ Nina Ames
Notary Public

My Commission expires: June 20, 1971

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CIVIL No. .....

[Title Omitted]

AFFIDAVIT OF PLAINTIFF ADOLOFO PEREZ IN SUPPORT OF MOTION FOR PRELIMINARY INJUNCTION

STATE OF ARIZONA)
) ss.
COUNTY OF PIMA)

ADOLFO PEREZ, being first duly sworn upon his oath, deposes and says: 1. That he is the husband of plaintiff EMMA PEREZ, and the father of HECTOR PEREZ, age 17; GILBERT PEREZ, age 14, LAURA PEREZ, age 9, and DANIEL PEREZ, age 6.

2. That affiant is employed by Krueger Manufacturing Company in Tucson, Arizona; that his place of work is approximately seven (7) miles from his home; that since the suspension of his driver's license and automobile registration he has relied on transportation furnished by his friends and neighbors, and at times he has to rely on public transportation and walking.

3. That in other cases when he needs transportation he has to rely on relatives and friends whenever an occasion arises.

4. That said suspension has caused affiant great harm and inconvenience and that he is suffering irreparable injury.

/s/ Adolfo Perez
ADOLFO PEREZ

SUBSCRIBED AND SWORN TO BEFORE ME this 2nd day of August, 1968.

/s/ Nina Ames
Notary Public

My commission expires: June 20, 1971

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

Civ-2478 Tuc.

[Title Omitted]

ORDER GRANTING PLAINTIFFS' MOTION TO PROCEED IN FORMA PAUPERIS—Filed August 2, 1968

UPON READING the verified Complaint herein, the Motion to Proceed in Forma Pauperis and the Affidavit of plaintiffs in support of plaintiffs' Request to Proceed in Forma Pauperis; and good cause appearing:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

That plaintiffs' Motion to Proceed in Forma Pauperis be granted pursuant to 28 U.S.C. 1915.

DONE IN OPEN COURT this 2nd day of August, 1968.

/s/ James A. Walsh
JAMES A. WALSH
JUDGE OF THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. Civ-2478-TUC

[Title Omitted]

DEFENDANTS' MOTION TO DISMISS—Filed September 11, 1968

(Oral Argument Requested)

Comes now defendants, David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, State of Arizona and D. J. Hastings, Supervisor, Financial Responsibility Section, Motor Vehicle Division, Arizona Highway Department, State of Arizona, by and through the Attorney General, Gary K. Nelson, and Robert H. Schlosser, Assistant Attorney General, and moves that this court dismiss this action because the allegations as plead fail to comply with Federal Rules of Civil Procedure, Rule 12(b)1 and Rule 12(b)6 as follows:

1. That a court convened pursuant to 28 U.S.C. 2281 et seq. does not have jurisdiction of this action.
2. That plaintiffs' complaint should be dismissed for it fails to state a claim upon which relief can be granted.

Respectfully submitted, this 10th day of September 1968.

GARY K. NELSON
The Attorney General

/s/ Robert H. Schlosser
ROBERT H. SCHLOSSER
Assistant Attorney General

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. Civ-2478-TUC

[Title Omitted]

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS—Filed September 20, 1968

Plaintiffs oppose defendants' motion to dismiss for the following reasons:

1. That this case is a proper case for a three-judge Federal Court.
2. That there are other substantial federal constitutional questions besides the supremacy clauses.
3. That as to the plaintiff Emma Perez the supremacy clause is not the main thrust of plaintiffs' complaint that plaintiff Emma Perez without being at fault suffers a deprivation of her rights without any meaningful constitutional protections.
4. That the complaint states a cause of action.

LEGAL AID SOCIETY

By: /s/ Anthony B. Ching
112 West Pennington Street
Tucson, Arizona 85701
Attorneys for the Plaintiffs

Copy mailed this 20th day of September, 1968, to:

Robert H. Schlosser
Assistant Attorney General
State Capitol
Phoenix, Arizona

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No. Civ-2478 Tucson

[Title Omitted]

ORDER—September 26, 1968

The Court rules that plaintiffs' claims as to the unconstitutionality of the Arizona statutes involved in this action are obviously insubstantial and, accordingly, the application that the Court request the appointment of a three-judge court is denied.

IT IS ORDERED granting the motion of defendants to dismiss plaintiffs' complaint for failure to state a claim upon which relief can be granted, and the complaint is dismissed.

Kesler v. *Department of Public Safety* (1962), 369 U.S. 153, 82 S.Ct. 807, 7 L.ed 2d 641; *Reitz* v. *Mealey* (1941), 314 U.S. 33, 62 S.Ct. 24, 86 L.ed 21; *Escobedo* v. *State Department of Motor Vehicles* (Cal. 1950), 222 P.2d 1, 6; *Sheehan* v. *Division of Motor Vehicles* (Cal. 1934), 35 P.2d 359, 361; *Rosenblum* v. *Griffin* (N.H., 1938), 197 A. 701, 704; *Berberian* v. *Lussier* (R.I. 1958), 139 A.2d 869, 873; *State* v. *Finley* (Kan. 1967), 426 P.2d 256, 265; 35 ALR 2d 1011, *et seq.*

DATED: September 26, 1968.

/s/ James A. Walsh
United States District Judge

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

CIVIL ACTION NO. Civ.-2478 Tucson

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and EMMA PEREZ for her separate self, PLAINTIFFS

vs.

DAVID H. CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE DIVISION, ARIZONA HIGHWAY DEPARTMENT, STATE OF ARIZONA and D. H. HASTINGS, SUPERVISOR, FINANCIAL RESPONSIBILITY SECTION, MOTOR VEHICLE DIVISION, ARIZONA HIGHWAY DEPARTMENT, STATE OF ARIZONA, DEFENDANTS

NOTICE OF APPEAL—Filed October 16, 1968

NOTICE IS HEREBY GIVEN that ADOLFO PEREZ and EMMA PEREZ, plaintiffs above named, hereby appeal to the United States Court of Appeals for the Ninth Circuit from the order of this court, Honorable James A. Walsh presiding, denying plaintiff's request to convene a three judge court and dismissing plaintiff's complaint for failure to state a claim upon which relief can be granted entered in this action of the 26th day of September, 1968.

DATED this 14th day of October, 1968.

/s/ Anthony B. Ching
Chief Trial Counsel
Legal Aid Society
112 West Pennington Street
Tucson, Arizona 85701

/s/ Winton D. Woods, Jr.
Legal Aid Society
112 West Pennington Street
Tucson, Arizona 85701

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 23,463

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and EMMA PEREZ for her separate self, APPELLANTS

vs.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle Division, Arizona Highway Dept., etc., ET AL., APPELLEES

Appeal from the United States District Court for the District of Arizona

OPINION—January 26, 1970

BEFORE: CHAMBERS, CARTER and KILKENNY, Circuit Judges.

KILKENNY, Circuit Judge:

In the District Court, the appellants challenged the constitutionality of certain Arizona statutes, sought to convene a three-judge court [1] and attempted to secure a preliminary injunction against appellees. The District Court concluded that the unconstitutional claims were obviously insubstantial and that the appellants' complaint failed to state a claim upon which relief could be granted. It denied the request for a three-judge court and dismissed complaint. We AFFIRM.

On July 8, 1965, Adolfo Perez was involved in an accident in his home state of Arizona. At the time, he was driving alone in an automobile registered in his name, but owned by the community Adolfo Perez and Emma Perez, husband and wife, the appellants. Later, in the Arizona Court, the occupants of the other automobile instituted an

[1] 28 U.S.C. § 2281.

action against appellants for damages sustained in the accident. Appellants appeared in that action and confessed judgment for approximately $2,450.00. Adolfo's driver's license, and his automobile registration, were thereafter suspended by reason of his failure to carry the liability insurance required under the provisions of ARS § 28.1142. Subsequently, the appellants filed separate petitions in bankruptcy and each was adjudicated a bankrupt. The confessed judgment was scheduled by each of the bankrupts. Appellants were thereafter duly discharged.

At a later date, the appellants were served with a notice by the Arizona Highway Department that their drivers' licenses, as well as motor vehicle registration, had been suspended pursuant to the provisions of ARS § 28.1162 (A).[2] ARS § 28.1163(B) provides, among other things, that a discharge in bankruptcy does not relieve a judgment debtor from the effect of ARS § 28.1162(A). Appellants allege that the suspension of their drivers' licenses and motor vehicle registration has caused them, and their family, a great hardship. ARS § 28.1165 permits the payment of this type of judgment in installments and, as long as payments thereunder are not in default, the drivers' licenses and motor vehicle registration of the judgment debtors may be returned and retained by them. Appellants have attempted to make an arrangement between the parties for payment of the judgment in installments, but no agreement has thus far been reached.

APPELLANTS' CONTENTIONS

Appellants' contentions, briefly stated, are as follows:

(1) That, as applied to appellants, ARS § 28-1163(B) is in conflict with Section 17 of the Bankruptcy Act, 11 U.S.C. § 35, and thus violates the supremacy clause of the United States Constitution.

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[2] ARS § 28.1162(A):

"The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and § 28-1165."

(2) That ARS § 28-1162(A), separately, and when read in connection with ARS § 28-1163(B), violates the due process and equal protection clauses of the Constitution, as imposed on the states by the Fourteenth Amendment.

(3) That the challenged statutes violate the Thirteenth Amendment to the Constitution, which prohibits involuntary servitude.

(4) That the challenged statutes constitute a bill of attainder prohibited by Article I, Section Ten of the United States Constitution.

The first issue has been decided against appellants in *Kesler* v. *Dept. of Public Safety*, 369 U.S. 153 (1962) and *Reitz* v. *Mealey*, 314 U.S. 33 (1941). Appellants ask us to re-examine these cases. Aside from our duty to follow Supreme Court decisions, we believe that the cases are sound.

In our view, all contentions of appellant, Adolfo Perez, have been answered against him by *Kesler* v. *Dept. of Public Safety, supra*, and *Reitz* v. *Mealey, supra*. The differences between the Utah statute involved in *Kesler* and the New York statute under scrutiny in *Reitz* and the challenged Arizona statute are so slight that we view them as *de minimus non curat lex*. For that matter, the requirements of the Arizona statutes are considerably less open to question than those under challenge in *Kesler* and *Reitz*. Inherent in the Supreme Court disposition of both *Kesler* and *Reitz* are rulings adverse to the equal protection, due process and other constitutional arguments of appellant, Adolfo Perez.

Aside from the decisions in *Kesler* and *Reitz*, a number of responsible courts have spoken on the subject and have held that financial responsibility laws, such as the one here in question, are not violative of the equal protection clause of the Fourteenth Amendment. The bellwether of this group dealing with the legislation before us in *Schecter* v. *Killingsworth*, 93 Ariz. 273, 380 P.2d 136 (1963), *Schecter*, in overruling *Goodwin* v. *Superior Court*, 68 Ariz. 108, 201 P.2d 124 (1948), holding that license to operate a motor vehicle was a mere privilege, and not a property right, went on to hold that the provisions of the Arizona Financial Responsibility Act requiring the posting of

security did not constitute deprivation of equal protection of the law in its application only to uninsured drivers who had been so unfortunate as to have been in an accident.

Financial responsibility laws, such as the Arizona statutes before us, do not unconstitutionally discriminate against the poor. Moreover, *Schecter* teaches that the provisions of the Arizona legislation, designed to provide security against uncompensated damages, is not violative of substantive due process. Although *Kesler* is not cited in *Schecter*, the logic there employed follows the same general pattern. No one questions that one of the principal purposes of financial responsibility acts is the protection of the public using the highways from financial hardship which might result by the negligent use of automobiles by financially irresponsible persons. That object is accomplished by requiring proof of financial responsibility by those involved in an accident either by the showing of insurance which covers the accident or requiring a bond or a deposit of cash or other securities. Incident to one of its principal purposes, by reason of threat of loss of driving rights following an uninsured accident, the legislation tends to encourage operators of motor vehicles to obtain liability insurance and to invite drivers to drive more carefully. The latter, however, are not the primary objectives of this legislation. The Arizona Court correctly rejected the constitutional challenges of lack of due process and equal protection of the laws. The fact that a person may be poor and unable to furnish financial security or pay a judgment growing out of his conduct on the highways does not guarantee that person a right to drive. Here, we should mention, as was emphasized in *Kesler*, the fact that the Arizona legislation permits the judgment debtors to pay the judgments in installments. While we are not governed by state decisions interpreting the United States Constitution, there is no rule against following those decisions when they are patterned after those in the Federal Courts.

APPEAL OF EMMA PEREZ

Mrs. Perez argues that the automobile was registered in her husband's name, he was the negligent driver and, al-

though the automobile was community property [3] and she, as a member of the community, confessed judgment that, nevertheless, the decisive logic of *Kesler* and *Reitz* should be confined to the driver of the automobile, such as her husband. She reasons that the rules stated in those cases should not be applied to an innocent wife who had no connection whatsoever with the conduct which was responsible for confession and entry of the judgment. There is a distinction. But it is a distinction without a significant difference. When she confessed judgment with her husband, she conceded her financial responsibility for the amount of the judgment. Under Arizona law, she had no alternative. *Donato* v. *Fishburn*, 90 Ariz. 210, 367 P.2d 245 (1961).

Starting with the fundamental permises that ownership of the vehicle was in the community of husband and wife and that Mrs. Perez' ownership was equal to her husband's subject to her husband's right to administer the property, *Mortensen* v. *Knight*, 81 Ariz. 325, 305 P.2d 463 (1956), we now explore Mrs. Perez' principal contention. She says she had nothing to do with the negligent driving of her husband. On the record before us that fact must be conceded. Moreover, she argues that her confession of judgment affects only her interest in the automobile and other community property. This status, she argues, should not lead to a forfeiture of her driver's license. In arriving at a proper result, we must take judicial notice of the fact that large numbers of the motor vehicles driven on the Arizona highways are community property. The husband or the wife, if each so desired, could purchase an automobile with separate funds and in such case the automobile would be the separate property of the purchaser. The negligent operation of such an automobile on separate business would not call into question the liability of the other spouse, nor the cancellation of the latter's license. The judgment entered in such a case would be against the spouse operating the vehicle or someone operating it with his authority.

It seems to us that Mrs. Perez' legal status, on the facts before us, is closely analogous to that of an automobile

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[3] ARS § 25-211.

owner who permits another to drive it. If the driver is negligent, judgment is entered against both the driver and the owner, or the owner alone. The financial responsibility laws have been uniformly applied against the owner under these circumstances. The parent case on this line of authority seems to be *In re Opinion of the Justices*, 251 Mass. 569, 147 N.E. 681 (1925), where the Supreme Judicial Court of Massachusetts explored the problem under that state's compulsory motor vehicle insurance act. It was there held that the extension of liability of the owner of a motor vehicle so as to include personal injuries caused by it, while being negligently operated with the owner's express or implied consent, even though not by himself, his servant or agent, violate no constitutional requirement. The Court held that such an extension of liability and the requirements for security by the owner of a motor vehicle for compensation of personal injuries caused by it, do not differ in principle from the civil liability act affording remedies to those injured by an intoxicated person against the person who caused such intoxication in whole or in part by sale or gift of intoxicating liquor. The Court then goes on to say that the general principle which sustains this type of legislation is that, when the general welfare of travelers on the highway, in the opinion of the legislature, is threatened by and demands protection against a specific evil, any rational means may be employed to remedy that evil.

The logic of the Massachusetts court was used to reach the same conclusion in *Watson* v. *State Division of Motor Vehicles*, 212 Cal. 279, 298 Pac. 481 (1931). The Arizona Supreme Court also employed the Massachusetts decision in reaching its conclusion in *State* v. *Price*, 49 Ariz. 19, 63 P.2d 653 (1937).

More in point is *Sheehan* v. *Division of Motor Vehicles*, 140 Cal. App. 200, 35 P.2d 359 (1934), *rehearing den.* August 20, 1934, *hearing den.*, Supreme Court, September 24, 1934, holding valid a statute permitting cancellation of a driver's license when the licensee was unable to pay a judgment. There, a judgment was entered against both husband and wife for damages suffered in a highway accident where the husband was driving the automobile. The judgment against here was sought and secured solely

on the ground that she was the owner of the automobile in question. There, as here, the judgment debtors were unable to satisfy the judgment in whole or in part. On failure to satisfy the judgment, the judgment debtors' operators' licenses and registration certificates were revoked There is a striking similarity between the California statute involved in that case and the one here before us. There, as here, the question presented was whether the wife's license should be revoked inasmuch as the judgment was entered against her solely by reason of her ownership of the automobile and not by reason of any negligence on her part in operating it. The California court answered in the affirmative. We approve the statement in that case that most of the reasons for revocation of a license applying to the operator of a motor vehicle, also apply to an owner who permits his vehicle to be operated under conditions which make him liable to another.

The following cases, among others, invoke the same legal principles and uphold the state's right to revoke the driver's license and the car registration after judgment has been entered against the owner and remains unsatisfied. *Continental Cas. Co.* v. *Phoenix Constr. Co.*, 46 Cal.2d 423, 296 P.2d 801 (1956); *State* v. *Price, supra*; *Reitz* v. *Mealey, supra*; *Sullins* v. *Butler*, 175 Tenn. 468, 135 S.W.2d 930 (1940); *Nulter* v. *State Road Comm'n.*, 119 W.Va. 312, 193, S.E. 549, 194 S.E. 270 (1937); *Gillaspie* v. *Dept. of Public Safety*, 152 Tex. 459, 259 S.W.2d 177 (1953), *cert. den.* 347 U.S. 933; *State* v. *Stehlek*, 262 Wis. 642, 56 N.W.2d 514 (1953); *Escobedo* v. *State Dept. of Motor Vehicles*, 35 Cal.2d 870, 222 P.2d 1 (1950); Annot., 35 A.L.R.2d 1011 (1954).

Can we logically distinguish *Escobedo*, and other cases of like tenor, from the case before us? Simply stated, a valid distinction does not exist. In *Escobedo*, the wife was the owner of the automobile, permitting her husband to drive the vehicle on the California highways. Here, the wife is the owner of her community interest in the automobile. The statutory and decisional law of Arizona make the husband what might be termed the managing agent of the wife in the control of the community automobile. We might well say that the Arizona community property

law was written into and became part of the marriage contract between appellants. Moreover, Mrs. Perez' drivers' license is not a right which is entirely separate and distinct from the community. With married couples in Arizona, the driver's licenses of both husband and wife are an integral part of the ball of wax, which is the basis of the Arizona community property laws. Although issued to the individuals, the licenses grant permission to drive community vehicles where a husband and wife are concerned. The fact, if it be a fact, that Mrs. Perez could not use the community property to purchase casualty insurance is beside the point. Her driver's license was issued subject to the financial responsibility law. The loss of her driver's license is the price an Arizona wife must pay for negligent driving by her husband of the community vehicle, provided, that neither she, her husband, nor the community pay the damages, established by judgment, flowing from the husband's negligent acts. In these circumstances, the police power of the state to exercise proper control over reckless, wrongful driving on its highways overbalances the wife's right to retain her license. It is our considered judgment that the legislation in question bears a real and a substantial relationship to public safety on the Arizona highways. Since Mrs. Perez cannot provide proof of that responsibility, she is no longer entitled to drive on the highways. Of course, arrangements can still be made to pay the judgment in installments.

Three-Judge Court

We agree with the trial judge that the claims of unconstitutionality are unsubstantial, within the meaning of the rule stated in *Ex Parte Buder*, 271 U.S. 461 (1926), as analyzed and approved in *Swift & Co.* v. *Wickham*, 382 U.S. 111 (1965).

Other contentions raised by the appellants have received our consideration.[4] We find them without substance.

AFFIRMED.

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[4] The problems rising from a divorce of the parties or death of the husband are not before us.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 23463

ADOLFO PEREZ and EMMA PEREZ, husband and wife, and EMMA PEREZ for her separate self, APPELLANTS

vs.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle Division, Arizona Highway Dept., etc., ET AL., APPELLEES

APPEAL from the United States District Court for the District of Arizona.

THIS CAUSE came on to be heard on the Transcript of the Record from the United States District Court for the District of Arizona and was duly submitted.

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this Cause be, and hereby is affirmed.

Filed and entered Jan. 26, 1970.

UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Excerpt from Proceedings of Wednesday, February 18th, 1970

Before: CHAMBERS, CARTER and KILKENNY, Circuit Judges

ORDER DENYING PETITION FOR REHEARING

On consideration thereof, and by direction of the Court, IT IS ORDERED that the petition of appellant filed February 9, 1970 and within time allowed therefor by rule of court, for a rehearing of above cause be, and hereby is denied.

SUPREME COURT OF THE UNITED STATES

No. 5175, October Term, 1970

ADOLFO PEREZ ET UX., PETITIONERS

v.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle Division

On petition for writ of Certiorari to the United States Circuit Court of Appeal for the Ninth Circuit.

On consideration of the motion for leave to proceed herein *in forma pauperis* and of the petition for writ of certiorari, it is ordered by this Court that the motion to proceed *in forma pauperis* be, and the same is hereby, granted; and that the petition for writ of certiorari be, and the same is hereby, granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

October 12, 1970.

☆ U. S. GOVERNMENT PRINTING OFFICE: 1970 408933 311

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IN THE

Supreme Court of the United States

October Term, 1970
No. 5175

ADOLFO PEREZ and EMMA PEREZ, Husband and Wife, and EMMA PEREZ for her separate self,

Appellants,

vs.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle Division, Arizona Highway Department, etc., *et al.*,

Respondents.

On Writ of Certiorari From the Judgment of the Ninth Circuit of Appeal, and Numbered Therein 23463.

Motion for Leave to File Amicus Curiae Brief Under Rule 42 Perez v. Campbell, Docket No. 5175.

Pursuant to Rule 42 of the United States Supreme Court, the Women's Center Legal Program and the Western Center on Law and Poverty respectfully move this Court for leave to file an *amicus curiae* brief herein on behalf of Emma Perez.

The primary interest of the Women's Center Legal Program is women's rights. The Western Center on Law and Poverty is primarily interested in the legal problems of poor women.

The *amicus curiae* brief raises constitutional issues not explicitly argued by Emma Perez' counsel, who

has requested that this brief be submitted. In his brief, counsel for Emma Perez has argued that the loss of her driver's license is not only in conflict with Federal bankruptcy law but also irrational. The *amicus* brief directs itself to the constitutional issues of equal protection inherent in an irrational legal result based on class discrimination. The constitutional arguments made in the *amicus curiae* brief are central to the disposition of this matter and will not otherwise be before this Court.

In a case such as this where the appellants must proceed *in forma pauperis* under severe financial limitations, it is especially important that *amicus curiae* be permitted to assist in the full presentation of the issues and arguments. We therefore respectfully request permission to file this brief under Rule 42 of the Supreme Court of the United States.

Respectfully submitted,

DAVID A. BINDER

Summary of Argument.

Emma Perez has been deprived of her driver's license through no fault of her own, but solely on the basis that she is a wife. The rationale of the lower court was that as the co-owner of the community vehicle, she is responsible for its misuse under the Arizona financial responsibility law. The flaw in this reasoning is that, unlike other owners, Mrs. Perez was deprived of control and management, not only over the community vehicle, but also over all other community assets, by the Arizona law giving her husband the exclusive control and management of the marital community property. Therefore, unlike other owners, Mrs. Perez had no legal or practical way of complying with the Arizona financial responsibility requirements.

On the basis of her sex, the state of Arizona has deprived Mrs. Perez not only of her driver's license, but also of her right to share in the management and control of her own property.

The Constitution requires that legal classifications be reasonable. Where important personal or property rights are in jeopardy, this Court has traditionally scrutinized classifications with great care. Moreover, classifications based on an unavoidable and permanent accident of birth, for example, race, are particularly suspect. This Court has further held that when a state deprives members of a particular class of important rights, the burden is upon the state to demonstrate that the classification is necessary to promote a compelling governmental interest.

The *amicus* brief applies the foregoing principles in re-examining the old rule that sex, without more, is a valid basis for legislative classification. An analysis of

the old case law and some of its historical background has been included in order to shed light on how this old rule came into being. Then follows contemporary scientific and sociological evidence demonstrating that the rule is based on false assumptions and that it is unreasonable. Trends in contemporary law showing that the rule is in conflict with our egalitarian heritage and our constitutional mandates are discussed. The parallel with the Negro struggle for civil rights is then examined, not only for its historical analogy, but also because it offers ample legal precedent for reversing an outmoded rule in the light of advancing constitutional standards.

In conclusion, the Court is urged to grant Emma Perez the relief she seeks, and to incorporate into the highest law of this land the principle that women, along with members of racial and ethnic minorities, must be accorded equal human dignity under our law.

IN THE

Supreme Court of the United States

October Term, 1970
No. 5175

ADOLFO PEREZ and EMMA PEREZ, Husband and Wife, and EMMA PEREZ for her separate self,

Appellants,

vs.

DAVID H. CAMPBELL, Superintendent, Motor Vehicle Division, Arizona Highway Department, etc., *et al.*,

Respondents.

AMICUS CURIAE BRIEF.

I.

The Constitutional Question.

This Court is called upon to decide herein whether a state law can deprive a person of her right to drive on the sole basis that she is a wife.

In 1963 the President's Commission on the Status of Women made the following appeal to this Court:

> "Early and definitive court pronouncement, particularly by the U. S. Supreme Court, is urgently needed with regard to the validity under the fifth and fourteenth amendments of laws and official practices discriminating against women, to the end that the principle of equality becomes firmly established in constitutional doctrine."[1]

[1] *American Women*, Report of the President's Commission on the Status of Women, October, 1963, p. 45.

This Court has a number of choices in deciding the case. One would be to affirm the view that ". . . the loss of her driver's license is the price an Arizona wife must pay for negligent driving by her husband,"[2] and deny appellant any relief. The Court cannot reach this conclusion without facing and rejecting the constitutional arguments presented in this brief, because such a holding affirms the rule that sex is a reasonable basis for legislative classification.[3]

Another alternative would be to declare that Mrs. Perez is not in the class of owners contemplated by the Arizona financial responsibility law, having, as a wife, been deprived by law of any control and management of the community property. This would grant Mrs. Perez the relief she seeks. However, without more, this alternative would uphold the rule that sex is a valid basis for legislative classification. Not only that, but such a holding would set back the rights of wives in community property states since it requires the legal conclusion that the "present, equal, and vested"[4] interests of wives in community property states are no more than a sham and a fiction.

We urge this Court to follow a third alternative: to grant Mrs. Perez the equitable relief she seeks, while at the same time recognizing that the root cause of her legal plight is an unconstitutional rule of law, a rule of law based on the untenable premise that women are incompetent and inferior.[5] We ask this Court to

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[2]*Perez v. Campbell*, 421 F. 2d 619, 624 (9th Circuit 1970).

[3]A rule that was formulated in *Muller v. Oregon*, 208 U.S. 412 (1908) and which has not since been directly dealt with by this Court.

[4]See, *e.g.*, Cal. Civ. Code §5105.

[5]See, *e.g.*, the language in *Muller v. Oregon*, 208 U.S. 412 (1908), pp. 421-422.

rule that this old classification can no longer be upheld in the light of scientific knowledge, social realities, and egalitarian principles of justice.

II.

Ownership and the Financial Responsibility Law.

Starting with paragraph five, the lower court decision deals with the appeal of Emma Perez:

> "Mrs. Perez argues that the automobile was registered in her husband's name, he was the negligent driver and, although the automobile was community property [footnote omitted] and she, as a member of the community, confessed judgment that, nevertheless, the decisive logic of *Kesler* and *Reitz* should be confined to the driver of the automobile, such as her husband. She reasons that the rules stated in those cases should not be applied to an innocent wife who had no connection whatsoever with the conduct which was responsible for confession and entry of the judgment."[6]

The court below then proceeds to point out that under Arizona law Mrs. Perez had no choice but to add her name to the confession of judgment[7] and goes on to reject Mrs. Perez' plea:

> "Starting with the fundamental premise that *ownership of the vehicle was in the community of husband and wife and that Mrs. Perez' ownership was equal to her husband's, subject to her husband's right to administer the property.* . . . [citation omitted] It seems to us that Mrs. Perez' le-

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[6]*Perez v. Campbell*, 421 F. 2d 619, 622-623 (9th Circuit 1970).

[7]*Ibid.*, 623.

> gal status, on the facts before us, is closely analogous to that of an automobile owner who permits another to drive it. If the driver is negligent, judgment is entered against both the driver and the owner, or the owner alone."[8] (Emphasis added).

The owner of an automobile may lose his license on account of an unsatisfied judgment even when he was not driving or in any way negligent on the rationale that one who permits the use of a vehicle should share the responsibility for its misuse.[9]

The justification is that the owner has a choice. He does not have to permit someone else to use (or manage and control) his car; he has the power to give or to withhold that use (or management and control). As the opinion of the Ninth Circuit points out, Mrs. Perez never had any such choice or power:

> "The statutory and decisional law of Arizona make the husband what might be termed the managing agent of the wife in the control of the community automobile."[10]

III.

The Community Property Law.

Mrs. Perez' ownership had none of the characteristics normally associated with ownership[11] such as the right to buy and sell, hypothecate, use, or authorize

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[8]*Id.*

[9]See, *e.g.*, *Sheehan v. Dept. of Motor Vehicles*, 140 Cal. App. 200, 205 (1934).

[10]*Perez v. Campbell*, 421 F. 2d 619, 624 (9th Circuit 1970).

[11]See, *e.g.*, *Ackerman v. Port of Seattle*, 329 P. 2d 210, 215 (Wash. 1958); *United States v. Lutz*, 295 F. 2d 736, 740-741 (5th Circuit, 1961); *Smith v. Simpson*, 260 N.C. 601, 609, 133 S.E. 2d 474, 481 (1963).

the use of the property. Under Arizona law the husband is given exclusive management and control over the marital community property.[12] Therefore, Mrs. Perez did not have any legal control over the use of the community automobile. Mrs. Perez could not legally have insured it. Further, since she had no control over the management of the remaining community assets, neither did she have any practical way of insuring it.[13] Under these circumstances, to call Mrs. Perez the owner of the community automobile as defined by the driver responsibility case law is little more than a semantic exercise.

The court below has suggested that Mrs. Perez could have avoided the whole problem by simply buying her own car with separate funds and seeing to it that her husband buy his own car with his separate funds.[14] Unfortunately there was not even enough money to buy insurance on the one car registered in Mr. Perez' name.

What befell Mrs. Perez befell her solely because of her sex. It all happened, as the lower court explained to her, because she is a wife.[15]

IV.

The Constitutional Argument.

"When the existence of a distinct class is demonstrated, and it is further shown that the laws, as written or as applied, single out that class for dif-

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[12]*Spector v. Spector,* 94 Ariz. 175, 382 P. 2d 659 (1963); *Mortensen v. Knight,* 81 Ariz. 325, 305 P. 2d 463 (1957).

[13]Contrast *Mostensen v. Knight, supra,* where liability was imposed upon a husband for his wife's negligent operation of a community vehicle *because* of the husband's exclusive control, with the instant case where liability was imposed upon the wife *despite* the husband's control.

[14]*Perez v. Campbell, supra,* p. 623.

[15]*Ibid.,* p. 624.

ferent treatment not based on some reasonable classification, the guarantees of the Constitution have been violated."[16]

The egalitarian principles of our constitution require that people be treated as individuals. Accordingly, classifications based on race "must be scrutinized with particular care."[17] Sex is analogous to race in that both are unavoidable and permanent accidents of birth.

State laws that abridge fundamental rights are particularly suspect under the Fourteenth Amendment. A legal classification that curtails or takes away a basic right constitutes invidious discrimination "unless shown to be necessary to promote a compelling governmental interest."[18]

The rights of which Mrs. Perez has been deprived on account of her sex are two such important and basic rights. The right to travel freely has been classified as fundamental by this Court.[19] The right to drive is a necessary corollary to that right in today's motorized society.[20] Property rights are explicitly

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[16]*Hernandez v. Texas*, 374 U.S. 475, 478 (1954).

[17]*Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

[18]*Shapiro v. Thompson*, 394 U.S. 618, 634 (1969).

[19]*Shapiro v. Thompson*, 394 U.S. 618 (1969).

[20]*E.g.*, a recent survey indicated that 82 percent of commuters use automobiles in order to get to work. *Automobile Facts and Figures*, 1970 Ed. publ. by Automobile Manufacturers Association, Inc., at p. 53, data taken from U.S. Dept. of Commerce, Bureau of the Census report "Home to Work Travel Survey." Further, 86 percent of all travelers use automobiles. *Automobiles Facts and Figures, op. cit.*, at p. 51, data taken from U.S. Dept. of Commerce, Bureau of the Census, 1967 National Travel Survey. The estimated number of motor vehicles that will be registered in the United States in 1970 is 108,977,000. U.S. Dept. of Transportation, Federal Highway Administration, News Release for September 16, 1970.

guaranteed by the Constitution[21] and by innumerable court decisions.[22] The right to manage and control one's property is inherent in the concept of property and a necessary incident of ownership.[23]

The lower court has explicitly stated that the loss of Mrs. Perez' license is due to her status as a wife.[24] Management and control of the community property is also denied Mrs. Perez on the basis of her sex. If it were based on competence or business judgment, the cases would so state.

A. The Old Case Law.

The rather broad language used by the court in *Muller v. Oregon*[25] in upholding protective legislation for women has since been cited to justify the proposition that sex is a valid basis for legislative classification.[26] For example, in 1948 it was held that unless they are related to the male owner, women can be excluded from being bartenders.[27] In 1961 it was held that women may be excluded from jury services unless they first register with the clerk of the court their desire to serve.[28]

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[21]U.S. Constitution, Fifth and Fourteenth Amendments.

[22]See, *e.g., Lucas v. Forty-Fourth General Assembly of the State of Colorado,* 377 U.S. 713, 736 (1964); *Knoll Associates, Inc. v. F.T.C.,* 397 F. 2d 530, 535 (7th Circuit 1968); *Penna. Coal Co. v. Mahon,* 260 U.S. 393 (1922).

[23]See, *e.g., Ackerman v. Port of Seattle,* 329 P. 2d 210 (Wash. 1968); *U.S. v. Lutz,* 295 F. 2d 736 (5th Circuit 1961); *Smith v. Simpson,* 260 N.C. 601, 133 S.E. 2d 474 (1963).

[24]*Perez v. Campbell, supra,* at p. 624.

[25]208 U.S. 412 (1908).

[26]Three years before *Muller, Lochner v. New York* (198 U.S. 45 [1905]) had held that a law limiting the working hours of both men and women was unconstitutional as an infringement of the individual's right to contract.

[27]*Goesart v. Cleary,* 335 U.S. 464 (1948).

[28]*Hoyt v. Florida,* 368 U.S. 57 (1961). Contrast this with

(This footnote is continued on the next page)

Such reasons as were advanced for upholding classifications based on sex boil down to either the naked assertion that men and women are different,[29] clearly not a reason unless the difference can be shown to be relevant, or that women are weaker and less competent than men, that they are in need of special protection, and that the security of the family would be undermined if women were accorded the same treatment as men.[30]

In 1966, *United States v. Yazell* held valid a Texas law (since repealed) providing that a married woman did not have the capacity to make a binding contract.[31] Dissenting in that case was Justice Black:

> "The Texas law of 'coverture'. . . rests on the old common-law fiction that the husband and wife are one. This rule has worked out in reality to mean that though the husband and wife are one, the

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exclusion of Negroes from juries which has been held to violate the due process and equal protection clauses of the Fourteenth Amendment. (See, *e.g., Reece v. Georgia,* 350 U.S. 85 (1955); *Eubanks v. Louisiana,* 356 U. S. 584 (1958).

[29]For example, *Goesart v, Cleary, supra,* gives no explicit reasons why women should not be permitted to act as bartenders, excepting wives or daughters of the owner.

[30]For example, p. 422, the *Muller* court said: "The two sexes differ in structure of body, in the functions to be performed by each, in the amount of physical strength, in the capacity for long-continued labor, particularly when done standing, the influence of vigorous health upon the future well-being of the race, the self-reliance which enables one to assert full rights and in the capacity to maintain the struggle for subsistence. This difference justifies a difference in legislation." Another example is the language of *Bradwell v. The State,* 16 Wall. 130 (U. S. 1872), at p. 141: "Man is, or should be, woman's protector and defender . . . . The paramount destiny and mission of woman are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases."

[31]*U. S. v. Yazell,* 382 U.S. 341 (1966).

> one is the husband. This fiction rested on what I had supposed is today a completely discredited notion that a married woman, being a female, is without capacity to make her own contracts and do her own business . . . It seems at least unique to me that this Court in 1966 should exalt this archaic remnant of a primitive caste system to an honored place among the laws of the United States."[32]

The foregoing cases are based on two myths: one is that women are incompetent dependents who, like children and mentally disturbed people, must be placed in separate legal categories for their own protection.[33] The second is that the preservation of the family depends on women being kept in the home.[34]

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[32] *Ibid.*, at 361.

[33] In *Muller v. Oregon*, 208 U.S. 412 (1908), at pp. 421-422, the Court said: "History discloses the fact that woman has always been dependent upon man. He established his control at the outset by superior physical strength, and this control in various forms, with diminishing intensity, has continued to the present. As minors, though not to the same extent, she has been looked upon in the courts as needing special care that her rights may be preserved . . . Though limitations upon personal and contractual rights may be removed by legislation, there is that in her disposition and habits of life which will operate against a full assertion of those rights . . . Differentiated by these matters from the other sex, she is properly placed in a class by herself, and legislation designed for her protection may be sustained, even when like legislation is not necessary for men, and could not be sustained."

[34] ". . . The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life. The constitution of the family organization, which is founded in the divine ordinance, as well as in the nature of things, indicates the domestic sphere as that which properly belongs to the domain and functions of womanhood. The harmony, not to say identity, of interests and views, which belong, or should belong, to the family institution is repugnant to the idea of a woman adopting a distinct and independent career of that of her husband. . . ." (*Bradwell v. The State*, 16 Wall. 130, 141 [U.S. 1892]).

Mrs. Perez is the victim of these myths. She was deprived of her driver's license through no fault of her own because of an Arizona law that assumes she is not competent to share in the management of the marital property. While the community property system recognizes the economic value of the wife's domestic contribution in caring for the home and children,[35] under this law the wife is denied the dignity of being treated as an adult endowed with reason, judgment and the capacity for economic responsibility.[36]

We will demonstrate that both these myths are false, that there is no rational ground for the rule that sex is a valid basis for legal classification and that the State has no defensible interest, compelling or otherwise, in this irrational legal rule.

B. The Historical Background.

In the absence of an enlightened judiciary, myths have historically been used to justify laws that deny women full citizenship.[37] Law and myth have interrelated to form self-perpetuating and self-fulfilling prophecies.[38]

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[35]See, *e.g.*, Harriet Daggett, "*The Civil-Law Concept of the Wife's Position in the Family*," 15 *'Ore. L. Rev.* 291 (1936).

[36]The second myth, that the preservation of the family hinges on keeping women submissive, obedient and economically dependent flows from and interrelates with the first. Those who fear that giving women full human rights must result in the destruction of the family fail to recognize that women, as well as men, need the affection, comfort and security of long-standing human relationships.

[37]See, *e.g.*, Simone De Beauvoir, *The Second Sex*, Modern Library, New York, 1968; Kate Millett, *Sexual Politics*, Doubleday & Company, New York, 1970.

[38]See, *e.g.*, De Beauvoir, *The Second Sex, op. cit.*, at pp. xxiii-xxiv of the Introduction: ". . . whether it is a race, a caste, a class, or a sex that is reduced to a position of inferiority, the methods of justification are the same . . . there are deep simi-

1. *Myth and the Law.*

Myths derogating women have been propounded by theologians, philosophers, and, more recently, scientists. It should be remembered, however, in evaluating the opinions of these men, that there have been other instances in history where divine or moral authority has been invoked to support injustice.[39] Slave owners, for example, justified slavery on the highest moral and religious authority.[40]

It should also be noted that from the outset there have always been voices speaking out against the subjection of women. Thus, while Aristotle said in his *Politics*:

> "We may thus conclude that it is a general law there there should be naturally ruling elements and elements naturally ruled . . . the rule of freeman over the slave is one kind of rule; that of the male over the female another. . . .",

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larities between the situation of woman and that of the Negro . . . In both case the former masters lavished more or less sincere eulogies, either on the virtues of the 'good Negro' with his dormant, childish, merry soul—the submissive Negro—or on the merits of the woman who is 'truly feminine'—that is, frivolous, infantile, irresponsible—the submissive woman."

[39]See, *e.g.*, Gunnar Myrdal, *An American Dilemma*, Harper and Bros. Publishers, New York, c. 1944, pp. 584-585 (American slavery); Ruth Benedict, *Race: Science and Politics*, Viking Press, New York, 1959, pp. 108, 143-146 (Europe, persecutions of Jews, Albigenses, Huguenots; Rhona Churchill, *White Man's God*, William Morrow & Co., New York, 1962, esp. p. 11 (South Africa; apartheid).

[40]An example of the moral language justifying slavery because the prophets, saints, apostles and martyrs all "went to glory from slaveholding countries and a slaveholding church" from the "Minutes of the General Assembly of the Presbytarian Church in the Confederate States of America," Vol. 1. Augusta, Ga., 1861, is reprinted at pp. 371-379 of *The Negro in American History*, Vol. II, William Benton, 1969.

Socrates believed in the equality of the sexes in intellectual and political activities.[41] It was, however, the opinion of Aristotle that was embodied in the Athenian laws. Women could not vote nor hold office; they could not own property; they could not conduct legal business; and each woman was the ward of her nearest male relative or her husband, and only through him did she enjoy any legal protection.[42]

A dramatic illustration of the use of myth to justify repressive laws are the witchcraft persecutions. The *Malleus Maleficarum,* the main document used in the suppression of witchcraft, deals extensively with the "evil nature of woman," explaining that:

> ". . . there was a defect in the formation of the first woman, since she was formed from a bent rib . . . since through this defect she is an imperfect animal, she always deceives . . . she is more carnal than man, as is clear from her many carnal abominations."[43]

A more recent example is Nazi Germany.[44] Nazi mythology described woman as an idealized breeding

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[41]Helen Bacon, "Woman's Two Faces: Sophocles' View of the Tragedy of Oedysus and His Family," in Jules H. Masterman, ed. *Science and Psychoanalysis,* Vol. 10, New York: Grune & Stratton, 1966, pp. 10-27.

[42]H. D. F. Kitto, *The Greeks,* Penguin Books, Inc., 1958, at p. 219. Despite our great historical emphasis on Athens, an emphasis that sometimes confused Athenian with Greek, we know these laws did not exist in all the city-states. In Sparta, for example, women's status was equal to that of men. They were given the same physical traning as boys, they participated in the games, and were educated through Spartan laws and institutions, to be "ideal citizens." See, *e.g.,* Charles Seltman, *Women in Antiquity,* Collier Books, New York, 1962.

[43]*Malleus Maleficarium,* transl. Montague Summers, London, Pushkin Press, 1948, in *Sisterhood is Powerful,* ed. Robin Morgan, Random House, New York, 1970, at p. 539.

[44]Some students of the Third Reich have observed that there is a general correlation between the extreme patriarchal character

machine. "The mission of woman is to be beautiful and to bring children into the world," said Joseph Goebbels.[45] Again these myths were the justification for repressive laws. For example, German women were forbidden to sit as judges when Hitler took over.[46] In an interview with a British journalist, Magda Goebbels had this to say about the matter:

> "The accounts printed in England about the expulsion of women from their jobs are highly exaggerated. The German woman has been excluded from only three professions: the military, the government and the practice of law."[47]

2. *The Common Law Influence.*

In this country, the myths about the inferiority of women clashed with the egalitarian ideas of the American Revolution. The common law tradition denying women elemental legal rights conflicted with the fundamental American conviction that each individual shall have the freedom to determine his own destiny and develop to the fullest his human potential.

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of Nazi Germany and its repressive authoritarianism. See, *e.g.*, David Schoenbaum, "*The Third Reich and Women*," in *Hitler's Social Revolution*, Doubleday & Co, New York, 1966, pp. 187-202.

[45]Quoted in George Mosse, *Nazi Culture*, Grossett and Dunlap, New York, 1966, p. 41.

[46]Another example is the Marriage Loans Law which took 8,000,000 women out of the labor market in 1933-34, although because of the German war economy and the armament efforts, the number of women in the labor force, albeit always in inferior and subordinate jobs, kept rising in the later years of the Third Reich. See, *e.g.*, Joseph K. Folsom's *The Family and the Democratic Society*, New York, John Wiley, 1943, p. 195.

[47]Quoted from the *Volkische Zeitung*, July 6, 1933, in George Mosse, *Nazi Culture*, *op. cit.*, p. 43.

The common law tradition accorded the wife no legal status whatsoever. As Blackstone said:

> "By marriage the husband and wife are one person in law; that is, the very being or legal existence of the woman is suspended during the marriage, or at least is incorporated and consolidated into that of the husband, under whose wing, protection and cover, she performs everything . . . and her condition during her marriage is called her *coverture.*"[48]

It therefore followed that upon marriage a woman's personal property became her husband's; that he was given absolute control over all rents and profits from her real property, over which, with certain limitations, he was also give absolute control; that she could neither make contracts nor sue; and that, for all practical purposes, she had no legal status whatsoever.

After listing these and the other legal disabilities that coverture worked on the wife, including the right of the husband to "restrain her by domestic chastizement," Blackstone had this to say:

> "These are the chief legal effects of marriage during the coverture: upon which we may observe, that even the disabilities which the wife lies under are for the most part intended for her protection and benefit; so great a favorite is the female sex of the laws of England."[49]

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[48]Blackstone, *Commentaries,* Nineteenth London edition, Vol. I, Lippincott Co., 1908, p. 355.

[49]*Ibid.,* p. 366. To which one of the commentators to Blackstone felt compelled to add his own footnote starting page 366: ". . . I shall here state some of the principal differences in the English law, respecting the two sexes; and I shall leave it to the reader to determine on which side is the balance, and how far

During the nineteenth and early twentieth centuries, this rationalization of the suppression of women as being for their own good and protection reached almost hysterical proportions. While poor women, not to speak of slave women,[50] performed the most arduous physical labor under the most inhuman conditions[51] and prostitution flourished,[52] the ideal woman

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this compliment it supported by the truth." "Husband and wife, in the language of the law, are styled *baron* and *feme*; the word baron or lord attributes to the husband a not very courteous superiority. But we might be inclined to think this merely an unmeaning technical phrase, if we did not recollect, that if the baron kills his feme, it is the same as if he killed a stranger, or any other person; but if the feme kills her baron, it is regarded by the laws as a much more atrocious crime; as she not only breaks through the restraints of humanity and conjugal affection, but throws off all subjection to the authority of her husband. And therefore the law denominates her crime a species of treason, and condemns her to the same punishment as if she had killed the king . . ." Then he goes on to several other examples, among them: "By the common law all women are denied the benefit of clergy; and till the 3 and 4 W & Mc. 9 they received sentences of death and might have been executed for the first offense in simple larceny, bigamy, manslaughter, etc.; however learned they were, merely because their sex precluded the possibility of their taking holy orders; though a man who could not read was for the same crime subject only to burning in the hand and a few months imprisonment. . . ."

[50]See *e.g.*, Kate Millett, *Sexual Politics*, New York, Doubleday & Co., 1970, p. 72.

[51]See, *e.g.*, Wanda Neff, *Victorian Working Woman*, Columbia University Press, New York, 1929. Neff on p. 72 quotes the words of a woman who was a "drawer" in the coal mines of Little-Boston: "I have a belt around my waist and a chain passing between my legs, and I go on my hands and feet." See also Eleanor Flexner, *Century of Stuggle*, Belknap Press, Cambridge, 1959, and Millett, *op. cit.*, for accounts of working conditions for women factory workers in the early part of this century, conditions which led to such tragedies as the Triangle Fire where one hundred forty-six women, most of them young girls, died because of the lack of safety precautions for which one of the partners who owned the shop was fined twenty dollars.

[52]For an incisive study of Victorian morality, see G. Rattray Taylor, *Sex in History*, New York, Ballantine Books, 1954, Chapter XI.

was depicted as "pure", "chaste," and, of course, a lady. It was she who was being protected. The basis again was, more often than not, her role of "mother of the race."

As a United States Senator put it, in a last ditch argument against female suffrage:

> "Whether the child's heart pulses beneath her own or throbs against her breast, motherhood demands above all tranquility, freedom from contest, from excitement, from the heart burnings of strife. The welfare, mental and physical, of the human race rests to a more or less degree upon that tranquility."[53]

3. *The Beginnings of Reform.*

It was in the context of the hypocritical Victorian sentimentalization of women and the family that the contemporary feminist movement, with its theme of women, not as ladies, mothers or "fallen women," but simply as human beings, arose.

Three-quarters of a century after the Declaration of Independence heralded the birth of this country, women applied that document to their sex. They rewrote it to read: "We hold these truths to be self-evident, that all men and women are created equal."[54] By the turn of the century, women had won significant social and

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[53]Senator McCumber of North Dakota, Congressional Record, 65th Congress, 2nd Session, Vol. 56, Part 2, p. 10774 (1919) quoted in Flexner, *op. cit.*, p. 309.

[54]Flexner, *op. cit.*, p. 75. Flexner points out that organized feminism was a direct outgrowth of the abolitionist movement. The nineteenth century was the first time in American history when women organized in significant numbers. They organized initially not to help themselves, but to help those who were in greatest need of help: slaves.

legal reforms. "Responding in great part to the rising tide of individual and organizational protest against the married women's status of legal subjugation to her husband," most American states passed some version of the Married Women's Act, conferring upon wives such basic rights as the right to contract, to sue, and to work outside the home without the husband's permission.[55] Also for the first time in their history women were given access to higher education.[56] At last women in the western world had some opportunity to refute the myths about their moral and intellectual inferiority.[57] These myths were also coming under attack due to social changes linked in part to the Industrial Revolution, the growing emphasis on science and rational thought, and the further growth of humanitarian ideals.

4. *Anatomy Is Destiny.*

Despite persistent handicaps, women in ever-growing numbers began to take advantage of new opportunities. Women seemed well on the road to achieving full citizenship. To counteract these gains that many still considered scandalous,[58] there now arose a new mythology, cloaked in scientific terminology. Freud's theo-

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[55]Leo Kanowitz, *Women and the Law, The Unfinished Revolution,* Univ. of New Mexico Press, Albuquerque, 1969, p. 40 ff.

[56]See, *e.g.,* Mabel Newcomer, *A Century of Higher Education for American Women,* Harper Bros., N.Y., 1969.

[57]Marie Curie won the Nobel prize in physics in 1903. Against tremendous opposition, the first woman doctor in the United States, Elizabeth Blackwell, founded her own clinic and school in New York in 1857. After *Bradwell v. The State, supra,* in 1872 denied women the constitutional right to practice law, the Supreme Court in 1879 admitted Belva Lockwood as the first woman lawyer entitled to practice at its bar. See discussion in Flexner, *op. cit.,* pp. 113-130.

[58]See, *e.g., Flexner, op. cit.,* pp. 294-305 ("Who Opposed Woman Suffrage").

ry of woman as an incomplete male was tailor-made to bolster sagging patriarchal dominance and again justify keeping women in "their place."[59]

Followers of Freud, while sifting through and rejecting a number of his other theoretical observations, have often chosen to go along with him on the subject of women. Erik Erikson declares that mature womanly fulfillment rests on "the fact that a woman's somatic design harbors an 'inner space' destined to bear the offspring of chosen men, and with it, a biological psychological and ethical commitment to take care of human infancy."[60]

The latest theory, as Joseph Rheingold succinctly put it, was: "Anatomy decrees the life of a woman."[61]

C. The Contemporary Evidence.

Laws in a democratic society recognize that individual differences are more significant than stereotypes based on race or sex. The contemporary social and scientific evidence is that sexual stereotypes are no more tenable than racial ones.

As John Stuart Mill put it:[62]

> "Standing on the ground of common sense and the constitution of the human mind, I deny that anyone knows, or can know, the nature of the

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[59]See Sigmund Freud, *Some Psychological Consequences of the Anatomical Distinctions Between the Sexes* (1925), Collected Papers, Vol. V, p. 190.

[60]Erik Erikson, *Inner and Outer Space: Reflections on Womanhood*, Daedalus (93), 1964.

[61]Joseph Rheingold, *The Fear of Being a Woman*, New York, Grune and Stratton, 1964, at p. 714.

[62]John Stuart Mill, "The Subjection of Women" (1869), reprinted in *Three Essays by J. S. Mill*, World's Classics Series, London, Oxford University Press, 1966, p. 451.

two sexes, so long as they have only been seen in their present relation to one another. . . . What is now called the nature of women is an eminently artificial thing—the result of forced repression in some directions, unnatural stimulation in others. It may be asserted without scruple that no other class of dependents have had their character so entirely distorted from its natural proportions by their relations with their masters."[63]

1. *Sex and Gender.*

Contemporary work in psychology, anthropology, sociology, and, more recently, biology indicates that much human behavior is learned.[64] No one would seriously suggest today that man's anatomy is his destiny. Man has developed learned patterns of behavior, or cultures, that vary widely from place to place and from time to time.[65] Man is not the prisoner of his instincts.[66]

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[63]Mill also recognized the use of the law in perpetuating myths: "That the principle which regulates the existing social relations between the two sexes—the legal subordination of one sex to the other—is wrong in itself, and now one of the chief hindrances to human improvement; and that it ought to be replaced by a principle of perfect equality, admitting no power or privilege on the one side, nor disability on the other . . ." Mill, *op. cit.*, p. 427.

[64]See, *e.g.*, J. Dollard and N. E. Miller, *Personality and Psycotherapy: an Analysis in Terms of Learning, Thinking, and Culture*, McGraw, New York, 1950; R. R. Sears, "Social Behavior and Personality Development," in *Toward A General Theory of Action*, ed. T. Parsons and E. A. Shils, Cambridge, Howard University Press, 1951, pp. 465-476.

[65]See *e.g.*, Ruth Benedict, *Patterns of Culture;* Houghton-Mifflin, 1959; Margaret Mead, *Sex and Temperament in Three Primitive Societies*, New American Library, 1950. On the evolution of thought with time see, *e.g.*, Arnold J. Toynbee, *A Study of History*, Oxford Univ. Press, New York, 1962 (in three volumes), esp. Vol. I, p. 1-51, 51-183.

[66]Even the few contemporary exponents of the instinct school of behavior, such as Ardrey and Lorenz (Konrad Lorenz, *On*

(This footnote is continued on the next page)

A recently developing body of scientific knowledge indicates that, despite all the pronouncement on the subject, there is no convincing evidence that the present status, role and temperament distinctions between male and female are biologically based. On the contrary, the research indicates that gender, that is, the sum of personality traits usually associated with sex, is overwhelmingly determined by cultural factors.

> "Gender is a term that has psychological or cultural rather than biological connotations. If the proper terms for sex are 'male' and 'female,' the corresponding terms for gender are 'masculine' and 'feminine': these latter may be quite independent of [biological] sex."[67]

Studies at the California Gender Identity Center dramatically point out that differences in gender are primarily culturally induced. For example, it was found easier to change surgically the sex of an adolescent male who had been wrongly classified as female, than

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Aggression, Harcourt, 1966; Robert Ardrey, *The Territorial Imperative*, Atheneum, 1966), have not argued that women are the prisoners of their biology. For example, among lions it is the lioness, not the lion, who, according to the first actual studies of lion societies, does the bulk of the hunting, (*E.g.*, George B. Schaller, "Life with the King of Beasts," 135 *Nat. Geographic*, pp. 494-519 [April, 1969].) For a study of animals where male and female members all cooperate in rearing the young, see Farley Mowat, *Never Cry Wolf*, Dell Publ. Co., New York, 1963.

[67]Robert J. Stoller, *Sex and Gender*, New York, Science House, 1968, pp. viii-ix, one of the leading workers in the field, differentiates between sex and gender as follows: "The word *sex*, in this work will refer to the male or female sex and the component biological parts that determine whether one is a male or a female; the word *sexual* will have connotations of anatomy and physiology. This obviously leaves tremendous areas of behavior, feelings, thoughts and fantasies that are related to the sexes and yet do not have primarily biological connotations. It is for some of these psychological phenomena that the term *gender* will be used.

to undo the consequences of a lifetime of socialization which had given him a female self-image and made him temperamentally feminine in gender, to the extent that his personality, interests, gestures, and self-image were totally feminine.[68]

> "The condition existing at birth and for several months thereafter is one of psychosexual undifferentiation. Just as in the embryo, morphologic sexual differentiations become fixed and immutable—so much so, that mankind has traditionally assumed that so strong and fixed a feeling of personal sexual identity must stem from something innate, instinctive, and not subject to postnatal experience and learning. The error of this traditional assumption is that the power and permanence of something learned has been underestimated. The experiments of animal ecologists on imprinting have now corrected this misconception."[69]

Work in other fields tends to validate the conclusion that gender roles are primarily determined by postnatal forces. Experiments in endocrinology and genetics have failed to yield any definite evidence that hormones are responsible for mental and emotional differences between the sexes.[70] Experiments in hypnosis indicate

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[68]See also, John Money, "Developmental Differentiation of Femininity and Masculinity Compared," in *The Potential of Women*, McGraw Hill, 1963, pp. 51-65.

[69]John Money, "Psychosexual Differentiation," in *Sex Research, New Developments*, New York, Holt, 1965, p. 12.

[70]For a summary, see *Biology and Behavior*, ed. David C. Glass, New York, Rockefeller Univ. and the Russell Sage Foundation, 1968. "In the absence of complete evidence," writes Robert Stoller, "I agree in general with Money, and the Hampsons who show in their large series of intersexed patients that gender role is determined by postnatal forces, regardless of the anatomy and physiology of the external genitalia." Stoller, *op. cit.*, p. 48.

that even physical characteristics, such as muscular strength, are greatly affected by cultural conditioning. For example, in a study done at the University of California at Los Angeles, female students who considered themselves frail, were, under hypnosis, able to lift forty pounds and upward, showing an increase in weight-lifting ability of almost 100 percent.[71]

> "Implicit in all the gender identity development which takes place through childhood is the sum total of the parents', the peers', and the culture's notions of what is appropriate to each gender by way of temperament, character, interests, status, worth, gesture, and expression. . . . Whatever the 'real' differences between the sexes may be, we are not likely to know them until the sexes are treated differently, that is, alike."[72]

2. *Contemporary Social Conditions.*

The stereotype of woman as "always dependent," "needing special care," and "properly placed in a class by herself" because she is lacking in "physical strength, in the capacity for long continued labor . . . the self-reliance which enables one to assert full rights, and in the capacity to maintain the struggle for subsistence" is totally incompatible with present social realities.[73]

Despite laws such as the Arizona law here in issue keeping women economically dependent and penalizing them for their feminine status, women have increasingly made valuable contributions in all areas of society.

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[71]Experiments performed by Professor Sydney Walter at the University of California at Los Angeles, Department of Psychology, 1963.

[72]Millett, *op. cit.*, pp. 29, 31.

[73]*Muller v. Oregon, op. cit.*, pp. 421-422. For the language used by the Court see notes 30 and 33, *supra.*

With the shift from an agrarian society, where the home was the main unit of economic production, to a highly technological society where production is more centralized, women have increasingly made their contributions both inside and outside the home.

By the turn of the century, five million American women worked outside their homes.[74] Although both World Wars I and II marked peak periods of female employment outside of the home,[75] by 1968 almost thirty million women were full time members of the labor force, nine million more than at the wartime employment peak of 1944.[76] Not only are women, including married women and mothers,[77] increasingly engaged in productive occupations outside of the home, but in 1967, 5.2 million American families were headed by women.[78]

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[74] *1969 Handbook on Working Women*, U.S. Dept. of Labor, Women's Bureau Bull., No. 294, p. 9. For some of the history of how both men and women began to move out of the home and into the factories, see, e.g., Caroline Bird, *Born Female*, Simon & Schuster, New York, 1969, Chapter 2, pp. 16-39. At p. 19, Bird writes: "It was profitable for the owner to hire women over men, since he could pay them less."

[75] "One of the ironies of history is that war has brought American women their greatest economic opportunities." *American Women*, Report of the President's Commission on the Status of Women, October, 1963, p. 3.

[76] *1969 Handbook on Women Workers, op. cit.*, p. 9. "Since 1940 American women have been responsible for the major share in the growth of the labor force. They accounted for about 65 percent of the total increase from 1940 to 1968, and their representation in the labor force has risen from one-fourth to almost two-fifth of all workers." *Handbook on Women Workers, op. cit.*, p. 5.

[77] *Handbook on Women Workers, op. cit.*, pp. 23, 37 ff. In March, 1967, 10.6 million working women were mothers of children under the age of eighteen, and 4.1 million of these had children under six. *American Women 1963-1968*, Report of the Interdepartmental Committee on the Status of Women, 1968, p. 5.

[78] *Handbook on Women Workers, op. cit.*, p. 31.

Today there are outstanding women in all professions. Women have won Nobel prices in physics, chemistry, literature, and peace.[79] The increasing number of women in public life, in politics, on the bench, and in business and industry, in short, the creative contributions of women everywhere, are further proof of how outmoded sex-based classifications are.[80]

D. Trends in Contemporary Law.

Laws that perpetuate the classification of individuals by their sex are no longer functional for either the affected individuals or society at large.

1. *The Egalitarian Theme.*

In recent decisions there is a trend away from the notion that sex is a valid basis for legislative classification. For example, in 1968 the Pennsylvania Supreme Court held that a statute sentencing women differently from men upon conviction of the same crime was unconstitutional.[81] The same result was reached

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[79]See, *e.g.*, *World Almanac*, 1970, p. 452.

[80]See, *e.g.*, Women's Heritage Calendar and Almanac, Graphic Communications Consultants, Santa Monica, California, 1970; Mabel Newcomer, *op. cit;* Ashley Montagu, *The Natural Superiority of Women*, Collier-Macmillan Ltd., London, rev. ed. 1970. The difficulty that women share with ethnic and racial minorities in finding documentations for their heritage and achievement is noted by, *e.g.*, Arthur M. Schlesinger in *New Viewpoints in American History*, New York, 1928: "An examination of the standard histories of the United States and the history text-books in use in our schools raises the pertinent question whether women have ever made any contributions to American national progress that are worthy of record . . . Any consideration of women's part in American history must include the protracted struggle of the sex for larger rights and opportunities, a story that is in itself one of the noblest chapters in the history of American democracy." (Quoted in Flexner, *op. cit.*, Preface, p. viii.)

[81]*In Commonwealth v. Daniels*, 430 Pa. 642, 243 A. 2d 400 (1968).

that same year in a Federal district court decision.[82] In *Rosenfeld v. Southern Pacific Co.*,[83] a Federal district court declared invalid California protective laws that give differential treatment to woman workers solely on the basis of their sex. Similarly, a New York court held that a policewoman could not be denied the right to take an examination for promotion on the basis of sex.[84]

Egalitarian legislation, such as the Nineteenth Amendment, the Equal Pay Act of 1963,[85] and Title VII of the 1964 Civil Rights Act[86] constitute landmark constitutional and legislative recognition that sex-based discrimination is obsolete.

The Equal Employment Opportunities Commission, in interpreting Title VII, has stated that, as a general rule, employers may not maintain separate job classifications based on sex and that individuals may not be refused employment because of assumptions or stereotypes about members of their sex.[87]

In 1919, the first state equal pay for equal work law was passed. By 1968, thirty-six states had such laws, and today the number is higher.[88] In 1965 the

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[82]*United States ex rel. Robinson v. York*, 281 F. Supp. 8 (D. C. Conn. 1968).

[83]*Rosenfeld v. Southern Pac. Co.*, 293 F. Supp. 1219 (Cent. D. Cal. 1968) (appeal now pending).

[84]*Shpritzer v. Lang*, 32 Misc. 2d 693, modiifed and affirmed, 234 N.Y.S. 2d 285, 289-290 (New York 1962).

[85]See discussion in Kanowitz, *op. cit.*, pp. 131-135.

[86]78 Stat. 253, 42 U.S.C. §2000 *et seq.* (1964).

[87]Sonia Pressman (Senior Attorney in the Office of the General Counsel at the Equal Employment Opportunity Commission in Washington, D. C.), "The Quiet Revolution," IV *Family Law Quarterly*, p. 31 at 33 (1970).

[88]See discussion in IV *Family Law Quarterly*, at p. 3 (1970).

President of the United States promulgated Executive Order 11246 forbidding sex-based discrimination in government employment.

2. *The Partnership Theme.*

Under the early Spanish law, from which much American community property law is derived, the husband and wife were regarded as separate individuals engaged in a common enterprise, or partnership, rather than as a mythical "unity." The wife was therefore given property rights as an individual, in both her separate property and the marital community.[89] In this country, the confusing juxtaposition of the common law and the civil law in community property states at first resulted in the erosion of some of the wife's rights.[90]

The later history of this body of law marks a step by step improvement in the position of the wife. For example, in California the husband was in 1891 restricted from making gifts without his wife's consent out of the community property.[91] In 1901 the wife's written consent was required by law for sale or encumbrance of household furnishings and clothing.[92] In 1917 the husband was forbidden from conveying real

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[89]See Daggett, *op. cit.*, pp. 293, 298.

[90]See, *e.g.*, Kanowitz, *op. cit.*, p. 63. *Cf.* Daggett, *op. cit.*, 300-301, describing the civil law concept of a wife as a "public merchant."

[91]Cal. Stats. 1891, Ch. 220, p. 425, §1 (now Cal. Civil Code §5125).

[92]Cal. Stats. 1901, Ch. 190, p. 598, §1 (now Cal. Civil Code §5125).

property without the wife's joinder.[93] In 1923 the wife was given the power of testamentary disposition over her one-half of the community property.[94] What remains now is to complete this process by giving the wife a share in the control and management of her own property.

E. The Racial Parallel.

The Negro struggle for civil rights, which has been compared to the struggle of women, was also hindered by a morass of myths.

> "As the Negro was awarded his 'place' in society, so there was a 'woman's place.' In both cases the rationalization was strongly believed that men, in confining them to this place, did not act against the true interest of the subordinate groups. The myth of the 'contented woman,' who did not want to have suffrage or other civil rights and equal opportunities, had the same social function as the myth of the 'contended Negro.' "[95]

"The rights of women and the rights of Negroes are only different phases of the fundamental and indivisible issue of human rights."[96]

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[93]Cal. Stats. 1917, Ch. 583, p. 829 §2 (now Cal. Civil Code §5127).

[94]Cal. Stats. 1923, Ch. 18, p. 29, §1 (now Cal. Prob. Code §201).

[95]From Myrdal, *An American Dilemma*, quoted in Murray and Eastwood, "Jane Crow and the Law: Sex Discrimination and Title VII," 34 *Geo. Wash. L. Rev.* 232, 234 (1965).

[96]Murray and Eastwood, "Jane Crow and the Law," *op. cit.*, 232, 235.

It has been noted that women, like Negroes, form part of a permanent class which they cannot escape or modify. As one commentator put it:

> "Not only are race and sex entirely comparable classes, but there are no others like them. They are large, permanent, unchangeable, natural classes. No other class is susceptible to implications of innate inferiority. Aliens, for instance, are essentially a temporary class, like an age class. Only permanent and natural classes are open to those deep, traditional implications which become attached to classes regardless of the actual qualities of the members of the class."[97]

F. Conclusion.

We ask this Court to rule that the suspension of Mrs. Perez' driver's license and the expropriation of her right to share in the management and control of her own property, based, as they are, on her sex, amount to a denial to her of the equal protection of our laws. We ask this Court to clarify the legal status of women[98] and to overturn the discriminatory and discredited rule that sex is a reasonable basis for legislative classification. In the words of the former chief Justice of the California Supreme Court, Roger J. Traynor:

> "Courts have a creative job to do when they find that a rule has lost its touch with reality and

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[97]Blanche Crozier "Constitutionality of Discrimination Based on Sex," 15 *Boston L. Rev.* 723, 727-8 (1935).

[98]In *U.S. v. Dege* (1960), 364 U.S. 51, this Court has already repudiated the doctrine that husband and wife are one, refusing to be "obfuscated" by a medieval fiction.

should be abandoned or reformulated to meet new conditions and new moral values. . . . We do a great disservice to the law when we neglect that careful pruning on which its vigorous growth depends and let it become sicklied over with nice rules that fail to meet the problems of real people."[99]

Sixteen years ago this Court stated: "Classifications based solely upon race must be scrutinized with particular care, since they are . . . constitutionally suspect."[100] Last year this Court said: "And a careful examination on our part is especially warranted where lines are drawn on the basis of wealth or race. . . ."[101]

Like race, sex is determined not by choice, but by birth. Like race, sex has in the past been used to deprive individuals of important civil rights.[102] Just as racial differences do not justify differential treatment under the law,[103] there is scientific and sociological proof[104] that classifications based on sex are equally unreasonable.

As has been often pointed out, individual variations are far more significant than generalities about ethnic,

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[99]Roger J. Traynor, "Law and Social Change in a Democratic Society," 1956 *U. Ill. L. F.* 220, 232, 236.

[100]*Bolling v. Sharpe*, 347 U.S. 497, 499 (1954).

[101]*McDonald v. Board of Election Commissioners*, 394 U.S. 802, 807 (1969).

[102]The right to practice law, *Bradwell v. the State*, 16 Wall. 130 (U.S. 1872); the right to freely contract, *Muller v. Oregon*, 208 U.S. 412 (1908); the right to enter an occupation of their choice, *Goesart v. Cleary*, 335 U.S. 464 (1948); the right to make a binding contract, *U.S. v. Yazell*, 382 U.S. 341 (1966).

[103]*Bolling v. Sharpe, op. cit.; Brown v. Board of Education*, 347 U.S. 483 (1954).

racial or sexual characteristics.[104] In the case of women, these variations must also be held the only permissible basis for classification inasmuch as there is no factual basis for the classification of women as incompetent or inferior. It was, however, precisely on that basis that Mrs. Perez was deprived of two fundamental and important rights.

This Court has held that a classification that penalizes the exercise of a basic constitutional right is unconstitutional and invidious discrimination "unless shown to be necessary to promote a compelling governmental interest."[105] It is hard to imagine what interest a state might have in depriving wives of personal and property rights. It has been said that the domination of the wife by the husband is necessary to the stability and protection of the family,[106] but such an argument is totally untenable in the context of contemporary democratic society and in the light of our standards of what is just and equitable. The notion that the family can only be preserved by maintaining wives in an inferior and economically dependent status is repugnant to all current ideas about famil-

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[104]*E.g.*, Murray and Eastwood, *op. cit.*, pp. 245-246.

[105]*Shapiro v. Thompson*, 394 U.S. 618, 634 (1969); for an early formulation of this rule see *Skinner v. Oklahoma*, 361 U.S. 535 (1942).

[106]"It seems to me as if the God of our race has stamped upon [the woman] a milder, gentler nature which not only makes them shrink from but disqualifies them from the turmoil and battle of public life. . . . Their mission is at home. . . . It will be a sorry day for this country when those vestal fires of love and piety are put out." Senator Frelinghuysen, "Congressional Globe," 39th Congress (1867), 2nd Session, Part I, p. 5, in Flexner, *op. cit.* pp. 148-149.

ial affection and mutual responsibility. In holding for Mrs. Perez, the Court will also further the original goal of the civil law and its evolution toward a mutual partnership.[107]

In weighing individual rights against traditional concepts of the family, this Court in 1968 held that an illegitimate child cannot be deprived of wrongful death benefits.[108] The parallel is striking: an accident of birth, be it sex or legitimacy, cannot be used to justify a classification that deprives an individual of personal and property rights under the law.

There is no compelling state interest, in fact, no interest at all, in perpetuating and continuing an outmoded and unreasonable method of legal classification. We respectfully urge that the Court extend to Mrs. Perez and to 110 million other American women the equal protection of our laws. As the President's Commission on the Status of Women stated:

> "Equality of rights under the law for all persons, male or female, is so basic to democracy and its commitment to the ultimate value of the individual that it must be reflected in the fundamental law of the land. . . ."[109]

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[107]"The ordinary and well-known principles of commercial partnership could be made applicable to a marital unit, and with few modifications could bring legal sanction to those couples who regard marriage as a mutual and cooperative social undertaking." Daggett, *op. cit.*, p. 305.

[108]*Levy v. Louisiana*, 391 U.S. 68 (1968); *Glona v. American Guarantee and Liab. Ins. Co.*, 391 U.S. 73 (1968).

[109]*American Women*, Report of the President's Commission on the Status of Women (Oct., 1963), p. 44.

The *amicus curiae* urges the Court to face the constitutional question of whether sex is a legitimate basis for legislative classification and to decide that such a classification violates the equal protection clause of the Fourteenth Amendment.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1970

No. 5175

ADOLFO PEREZ, ET UX.,

Petitioners,

v.

DAVID H. CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE DIVISION, ARIZONA HIGHWAY DEPARTMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

PETITIONERS' BRIEF

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OPINION BELOW

The opinion of the U.S. Court of Appeal for the Ninth Circuit affirming the district court's order dismissing petitioners' complaint is reported at 421 F.2d 619 and also appears in the Appendix in this cause. (A. 18).

JURISDICTION

The jurisdiction of the district court was invoked pursuant to 28 U.S.C. § 1334 and Section 11 of the Bankruptcy Act, 11 U.S.C. § 29. The district court on September 26, 1968, entered judgment for the defendants dismissing the complaint. (A. 16). A timely appeal was then taken to the U.S. Court of Appeal for the Ninth Circuit pursuant to 28 U.S.C. § 1291. On January 26, 1970, a decision was rendered by the Court of Appeal affirming the decision of the district court. Motion for rehearing was filed on February 9, 1970, and on February 18, 1970, petitioners motion for rehearing was denied. Timely Notice of Appeal for writ of certiorari was filed on April 15, 1970 and the petition for certiorari duely docketed. On October 12, 1970 Certiorari was granted. The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

U.S. Constitution art. VI, cl. 2.

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, anything in the Constitution or Laws of any State to the Contrary notwithstanding."

U.S. Constitution art. I, Section 8, cl. 4.

> "The Congress shall have Power
> 4. To establish an uniform Rule of Naturalization, and uniform Laws on the subject of Bankruptcies throughout the United States."

The Bankruptcy Act, Section 17, 11 U.S.C. § 35 provides in part that:

> "Debts not affected by a discharge.
> A discharge in bankruptcy shall release a bankrupt from all of his provable debts, whether allowable in full or in part, except ***" (exceptions not material here).

The Arizona statute, the constitutionality of which is challenged, is Title 28, Chapter 7, Article 4, Section 28-1163(B), Arizona Revised Statutes (A.R.S.), which provides:

> "B. A discharged in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article."

The requirement of this article complained of here is Arizona Revised Statutes § 28-1162 which provides:

> "A. The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and § 28-1165.
>
> B. If the judgment creditor consents in writing, in such form as the superintendent may prescribe, that the judgment debtor be allowed license and registration of nonresident operating privileges, the same may be allowed by the superintendent in his discretion, for six months from the date of the consent and thereafter until the consent is revoked in writing, notwithstanding default in the payment of the judgment, or of any installments thereof prescribed in § 28-1165, provided the judgment debtor furnishes proof of financial responsibility."

Arizona Revised Statutes § 28-1102(2) in part, defines "Judgment":

> "*Judgment* means any judgment which has become final by expiration without appeal of the time within which an appeal might have been perfected, or by final affirmation on appeal, rendered by a court of competent jurisdiction of any state or of the United

States, upon a cause of action arising out of the ownership, maintenance or use of a motor vehicle . . ."

QUESTION PRESENTED FOR REVIEW

Does the Arizona statute which conditions the return of a judgment debtor's driver's license and automobile registration on the payment of the judgment, notwithstanding the discharge of the judgment in bankruptcy, conflict with Section 17 of the Bankruptcy Act and therefore violate the Supremacy Clause as to:

(a) a negligent driver?
(b) his innocent wife?

STATEMENT OF THE CASE

On July 8, 1965, Adolfo Perez, while driving alone in his automobile, collided with an automobile owned by Leonard Pinkerton and operated by Janice Pinkerton (A. 3). Emma Perez was at the time of the accident and is now the wife of Adolfo Perez. On September 6, 1966, a complaint was filed in the Superior Court of Pima County, Arizona by the Pinkertons against Adolfo Perez and Jane Doe (Emma) Perez, husband and wife, seeking recovery for damages sustained in the collision in 1965 (A. 3, R. 50-52). On October 31, 1967, Adolfo Perez and Emma Perez confessed judgment to the Pinkertons and a judgment was entered against their marital community as husband and wife. (A. 3, R. 53, 54, 55).

On November 6, 1967, Adolfo Perez and Emma Perez each filed petition in bankruptcy in the United States District Court and each of them was adjudicated a bankrupt. (A. 4). The debt and judgment owed the Pinkertons was scheduled by each of the bankrupts and was duly discharged on July 8, 1968. (A. 4).

On March 13, 1968, Adolfo Perez and Emma Perez were served with notice by the Arizona Highway Department that pursuant to A.R.S. § 28-1162(A), their drivers' licenses and automobile registrations were suspended (A. 4). The discharge in bankruptcy had no effect on the operation of this statute since A.R.S. § 28-1163(B) provides that a discharge in bankruptcy does not relieve the judgment debtor of this penalty. The loss of the drivers' licenses and automobile registrations has caused a great hardship to Adolfo Perez, his wife Emma and their children. (A. 10, 11, 12).

On August 2, 1968, Adolfo and Emma as husband and wife and Emma, on behalf of her separate self, filed the complaint in this case seeking declaratory and injunctive relief. In their complaint, they alleged, among other grounds, that the Arizona statute is in conflict with Section 17 of the Bankruptcy Act and therefore violates the Supremacy Clause of the U.S. Constitution. (A. 5). Petitioners, in their complaint and by motion supported by affidavits, requested preliminary and permanent injunctions to restrain the enforcement of the Arizona statute affecting them. (A. 7). Permission was granted by the District Court for them to proceed in forma pauperis. (A. 13).

The defendants then moved to dismiss the complaint on the ground that the Court had no jurisdiction over the subject matter and that the complaint failed to state a claim upon which relief could be granted. (A. 14). Petitioners opposed that motion. (A. 15). After oral argument, the District Court, on September 26, 1968, entered judgment for the defendants and dismissed the complaint. (A. 16).

An appeal was then taken to the U.S. Court of Appeal for the Ninth Circuit pursuant to 28 U.S.C. § 1291. On January 26, 1970, the Court of Appeal rendered its decision affirming the judgment below. (A. 26). Motion for rehearing was filed by the petitioners on February 9, 1970 and their motion was denied on February 18, 1970. (A. 27). Petitioners timely filed their Notice of Appeal on April 15, 1970 and their petition was duly docketed. On

October 12, 1970, this Court granted writ of certiorari and allowed petitioners to proceed in forma pauperis. (A. 28).

ARGUMENT

I

AS TO PETITIONER ADOLFO PEREZ THE DECISION OF THE COURT OF APPEAL SUSTAINING THE ARIZONA STATUTE SHOULD BE REVERSED AS THE ARIZONA STATUTE VIOLATES THE SUPREMACY CLAUSE BECAUSE OF ITS CLEAR CONFLICT WITH THE BANKRUPTCY ACT. THE PRIOR DECISIONS WHICH THE COURT OF APPEALS RELIED UPON WERE UNSOUND AND SHOULD NOW BE OVERRULED.

The U.S. Constitution has given Congress the exclusive power to deal with bankruptcies. The bankrupt receives by virtue of his discharge "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt." *Local Loan Co. v. Hunt,* 292 U.S. 234, 244, 78 L.ed 1230, 1235, 54 S.Ct. 695, 93 A.L.R. 195, 24 Am Bankr Rep(NS) 668, (1934). The states may not create legislation to interfere with the Federal enactment in any way as the bankruptcy power is "unrestricted and paramont". *International Shoe Co. v. Pinkus,* 278 U.S. 261, 265, 73 L.ed 318, 320, 49 S.Ct. 108, 13 Am Bankr Rep(NS) 108, (1929).

Notwithstanding the apparent conflict with the discharge provision of the Bankruptcy Act, a New York statute which provided for suspension of driver's license for three years as to a judgment debtor in a negligence case, restoration of the license upon satisfaction by payment of the judgment and proof of future financial responsibility, and excepting a discharge in Bankruptcy as satisfaction, was found by this Court in *Reitz v. Mealey,* 314 U.S. 33, 86 L.ed 21 62 S.Ct. 24, (1941), to be not in violation of the Due Process Clause nor inconsistent with the Bankruptcy Act. This Court said in *Reitz:*

> "The penalty which § 94-b imposes for injury due to careless driving is not for the protection of the creditor merely but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless drivers were permitted to escape its provisions by the simple expedient of voluntary bankruptcy, and accordingly the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety." 314 U.S. @ 37.

Although in the interim New York had amended its statute to provide for suspension upon creditor's request and the restoration without satisfaction upon creditor's consent, consideration of the validity of these amendments were avoided by this Court in *Reitz*.

Some twenty years later, this Court review a Utah financial responsibility statute which was very similar to the New York statute as amended. The Utah law was again upheld by this Court. In *Kesler v. Dept. of Public Safety*, 369 U.S. 153, 7 L.ed 2d 641, 82 S.Ct. 807 (1962), this Court reaffirmed the *Reitz* doctrine and decided that the same police power exerted for the protection of public safety and to deter unsafe driving was sufficient to sustain the creditor request and consent provisions.

The Arizona statutes challenged here are not unlike the Utah ones discussed in *Kesler*. Relevant provisions of Arizona's financial responsibility law under question are:

1. suspension of driver's license and automobile registration upon the judgment becoming final;[1]

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[1] A.R.S. § 28-1162A, § 28-1102(2).

2. restoration of the license and registration without satisfaction of the judgment if the creditor consents, the consent may be revoked at will;[2]

3. restoration of the license and registration upon payment or partial payment of the judgment;[3]

4. restoration of the license and registration if the superior court fixes a schedule of payments by installments and while payment on the installment is not in default;[4]

5. discharge of the judgment in bankruptcy shall not relieve the debtor from satisfying the above requirements to obtain the return of the license and registration;[5] and

6. proof of future financial responsibility is required in all instances of restoration of license and registration.[6]

Arizona's insistence on payment or installment payment of the discharged debt as a condition to regain the license and registration substantially deprives Adolfo the immunity afforded him by the discharge as well as his right to drive on its highways. In a departure from the traditional notion that driving constitutes a "privilege" and not a "right", the Arizona Supreme Court said in *Schecter v. Killingsworth*, 93 Ariz. 273, 380 P.2d 136 (1963):

> "In this day when the motor vehicle is such an important part of our modern day living when the use of the vehicle is so essential to both a livelihood and the enjoyment of life, this court recognizes that the use of the public highway is a right which all

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[2]A.R.S. § 28-1162B.

[3]A.R.S. § 28-1163A (see appendix), § 28-1164 (see appendix).

[4]A.R.S. § 28-1165 (see appendix).

[5]A.R.S. § 28-1163B.

[6]Petitioners agree that this provision, as to Adolfo Perez is not unreasonable and represents a proper exercise of the state's police power.

qualified citizens possess, subject, of course, to reasonable regulation under the police power of the sovereign." 380 P.2d @ 140.

There is little question that a driver's license and the automobile registration may be the key to the ability to transport oneself to a place of work, to obtain employment, to maintain an income for the family and; in states such as Arizona where public transportation and mass transit are almost non-existent, the only means of travel to essential places such as schools for the children, hospital and doctor's office for the suddenly ill, shopping for the family larder, etc.[7] Therefore, to the bankrupt who need to regain his license for these compelling reasons, the state's deprivation of the benefits secured under the Bankruptcy Act is fundamental and complete.

In urging this Court to overrule its prior decisions petitioners are not unmindful of the fact that settled construction of a federal statute should not ordinarily be disturbed. However, when error of the prior decisions becomes manifest, and questions of a basic and important right are at stake, this Court should not hesitate to overrule these decisions.[8]

Examination of this Court's opinions in both *Reitz v. Mealey*, supra, and *Kesler v. Dept. of Public Safety*, supra, shows that the one underlying reason for sustaining the states' statutes was: "the statute is an appropriate exercise of the state's police power because the punishing of the careless drivers by depriving them the refuge in bankruptcy serves as a deterrent to unsafe driving".

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[7] Emma's and Adolfo's affidavits (A. 10-12).

[8] In *Erie Railroad Co. v. Tompkins*, 304 U.S. 64, 82 L.ed 1197, 58 S.Ct. 817, this Court overruled *Swift v. Tyson*, 16 Pet. 1, 10 L.ed 865 a case decided some fifty years previously dealing with construction of 28 U.S.C. § 725.

It is indisputable that in addition to whatever criminal sanctions Arizona has already imposed on Adolfo under its traffic code for the negligent driving, this statute serves as an increased punishment. The question one must ask is: "by keeping Adolfo from driving until he pays up is the public really protected?" Analysis of the facts here and Arizona's statutory scheme and purpose requires that the answer to this question be NO. We know that there is no correlation between safe driving and one's ability to pay the judgment. Adolfo is not necessarily a worse driver by virtue of being at one time a careless one. Moreover, Arizona can and has adequately insured public safety by requiring that he be examined prior to the restoration of his license.[9] The public is further protected from financial irresponsibility by the demand of future insurance. In many ways, Adolfo Perez, if again permitted to drive, would be a far safer and financially responsible driver than those uninsured drivers who have yet had their first accident.

The practical effect of the Arizona law is to deny the Perezes their licenses and registration permanently until the judgment is satisfied by payment. Arguably, the statute may incidentally encourage Adolfo to drive more carefully if he regains his license. This casual effect, however, should not warrant the drastic consequences of the statute. Arizona has otherwise decided, by legislation, that all suspensions and revocations of drivers' licenses due to unsafe conduct shall be for a period of only one year.[10] Therefore, the singling out of people such as Adolfo for special treatment in derogation of their rights under the Bankruptcy Act leads to the inescapable conclusion that the primary purpose of the Arizona statute is not to promote public safety but to enable creditors to collect judgments otherwise discharged in bankruptcy.

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[9] A.R.S. 28-421 requiring examination of applicants, and A.R.S. 28-447 requiring re-examination at the department's discretion.

[10] A.R.S. 28-448 (see appendix).

Finally, in construing the Arizona Financial Responsibility Act, the Arizona Supreme Court, in *Schecter v. Killingsworth*, supra, has said that the promotion of highway safety was not the primary purpose of this particular law, but that the Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons. Although the Schecter case dealt with suspension of license and registration after accident but before judgment the purpose enunciated are equally applicable to the case of suspension after judgment as both measures are attempts to aid the victim in obtaining monetary recovery. Against this background, it would appear that the legitimate state purposes in the promotion of public safety and the deterrence of unsafe driving justifying the results in *Reitz* and *Kesler* are absent in Arizona. *Erie Railroad Co. v. Tompkins*, supra.

Therefore, the Arizona statute presents a clear case of collision with the Bankruptcy Act and must be invalidated under the Supremacy Clause.

II

AS TO PETITIONER EMMA PEREZ THE DECISION OF THE COURT OF APPEAL SUSTAINING THE ARIZONA STATUTE SHOULD BE REVERSED AS THE ARIZONA STATUTE VIOLATES THE SUPREMACY CLAUSE BECAUSE OF ITS CLEAR CONFLICT WITH THE BANKRUPTCY ACT. THE COURT OF APPEAL'S RELIANCE ON PRIOR DECISIONS OF THIS COURT WAS ILLOGICAL AND MISPLACED.

All of the argument made in Argument I of this brief applies with equal force to Emma Perez. Moreover, as she is neither an unsafe nor a financially irresponsible driver, none of the concededly legitimate state purposes in enacting this type of legislation should have any applicability as to her. Her involvement came about solely because she is the wife of Adolfo Perez and therefore under the community property laws of Arizona was a proper nominal defen-

dant and judgment debtor in the lawsuit.[11] The judgment was against the marital community of Adolfo Perez and Emma Perez, husband and wife, and did not bind her seperate property. Nonetheless, her driver's license and automobile registration was suspended by the operation of the Arizona law.

The Court of Appeal sustained the Arizona statute under the theory that Emma's "ownership" of the automobile driven by Adolfo supplied the nexus to the state's police power to reach her. The closest case in point cited in the opinion below as *Sheehan v. Division of Motor Vehicles*, 140 Cal. App. 200, 35 P.2d 359 (1934), holding valid the suspension of the wife's driver's license under California's financial responsibility act. The California Court said in Sheehan:

> "A particular accident resulting in an unpaid judgment against the owner would not have happened had not the *owner* of the car *furnished* the operator with the dangerous instrumentality and *permitted* him to use the same on the highways and the *owner* thus assumed, in part at least, a responsibility for any interference with the rights of the others that may occur." 35 P.2d @ 361, 362 (italics added)

Factually and logically, the Sheehan case and the line of cases cited in the opinion below, sustaining the suspension of the license and registration of an owner whose automobile was involved in an accident, can and must be distinguished from Emma's case here. First of all, the automobile which Adolfo drove when he had the accident was the community property of she and her husband. In Arizona, the husband is the manager of the marital community and is in charge of all the business affairs of the community.[12] Thus,

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[11] *Ruth v. Rhodes*, 66 Ariz. 129, 185 P.2d 304 (1947). *Donato v. Fishburn*, 90 Ariz. 210, 367 P.2d 245 (1961).

[12] *Mortensen v. Knight*, 81 Ariz. 325, 305 P.2d 463 (1956). *Donato v. Fishburn*, supra, A.R.S. § 25-211 (see appendix).

in regard to the automobile involved in the accident, Emma neither furnished nor permitted Adolfo the use of the automobile. A wife in Arizona cannot even purchase an automobile or contract for liability insurance unless it concerns her seperate property.[13] As to community property her power to contract is limited to necessaries.[14]

The opinion of the Court of Appeal characterized the drivers' licenses of both Adolfo and Emma is an integral part of the ball of wax which is the basis of the Arizona community property law. This is erroneous as Arizona law is to the contrary. A driver's license in Arizona is not property. It is a personal right which is possessed by all qualified citizens, be they single, married or divorced, *Schecter v. Killingsworth*, supra. The licenses do not merely grant permission to drive community vehicles. They grant permission to drive any and all motor vehicles, owned or non-owned, community or separate property, anywhere in Arizona or in other states. To characterize the wife's driver's license as property would create a ridiculous result; e.g. if she possessed the license before her marriage, the license would be she separate property;[15] on the other hand, if she obtained the license during coverture it would then be deemed community property.[16]

At this juncture, one may question why would Arizona adopt a statute with such punitive result as to the wife. The answer becomes obvious when the origin of the Arizona financial responsibility act is considered. It was a uniform act, promulgated by the National Conference on Streets and Highway Safety, to be adopted in all states uniformly.[17]

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[13] A.R.S. § 25-214 (see appendix).

[14] A.R.S. § 25-215 (see appendix).

[15] *Blaine v. Blaine*, 63 Ariz. 100, 159 P.2d 786 (1945).

[16] *Donn v. Kunz*, 52 Ariz. 219, 79 P.2d 965 (1938).

[17] *Kesler v. Dept. of Public Safety*, 369 U.S. @ 165.

The problem encountered by Emma was not anticipated by the drafters of the Act as there are but a handful of states with the peculiarities of the community property law.[18]

It therefore appears that as to Emma Perez, the use of Arizona's police power in taking away her right to drive and automobile registration for the sole reason that she is the wife of an erstwhile negligent driver raises a serious violation of due process of law. When that state action interferes with the paramount federal interest in the Bankruptcy Act as to her discharge, a clear conflict emerges which is not resolved by the *Reitz* and *Kesler* decisions. As to Emma Perez, the prevailing state purposes to punish reckless driving and to deter unsafe driving are manifestly absent. It would therefore be appropriate for this Court to distinguish its prior decisions and to decree that as to Emma the Arizona statute conflicts with the Bankruptcy Act and thus offends the Supremacy Clause.

CONCLUSION

For the reasons argued, petitioners respectfully pray that this Court reverse the decision of the Court of Appeal as to both Adolfo and Emma. In the alternative, petitioners submit that this Court should reverse the Court of Appeal's decision as to Emma Perez.

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APPENDIX

ARS § 25-211. Property acquired during marriage as community property; exceptions; disposition of personal property.

A. All property acquired by either husband or wife during the marriage, except that which is acquired by gift, devise or descent, or earned by the wife and her minor children while she lives separate and apart from her husband, is the community property of the husband and wife.

B. During coverture, personal property may be disposed of by the husband only.

ARS § 25-214. Legal capacity of married women generally, control of separate property.

A. Married women of the age of twenty-one years and upwards have the same legal rights and are subject to the same legal liabilities as men of the age of twenty-one years and upwards except the right to make contracts binding the common property of the husband and wife.

B. Married women have the sole and exclusive control of their separate property. The separate property of a married woman is not liable for debts or obligations of the husband, and it may be sold, mortgaged, conveyed or bequeathed by the woman who owns it as if she were not married.

ARS § 25-215. Power of wife to contract debts for necessaries: judgment, order of execution.

The wife may contract debts for necessaries for herself and children upon the credit of her husband. In an action to collect such a debt the wife and her husband shall be sued jointly and the court shall decree that execution be levied first upon the common property, second upon the separate property of the husband and third upon the separate property of the wife.

ARS § 28-448. Period of suspension or revocation.

A. The department shall not suspend a driver's license or privilege to drive a motor vehicle on the public highways for a period of more than one year, except as permitted under § 28-473.

B. A person whose license or privilege to drive a motor vehicle on the public highways has been revoked shall not be entitled to have the license or privilege renewed or restored unless the revocation was for a cause which has been removed, except that after the expiration of one year from the date on which the revoked license was surrendered to and received by the department the person may make application for a new license as provided by law, but the department shall not then issue a new license unless and until it is satisfied after investigation of the character, habits and driving ability of the person that it will be safe to grant the privilege of driving a motor vehicle on the public highways.

ARS § 28-1163. Suspension to continue until judgment paid and proof given.

A. The license, registration and nonresident operating privilege shall remain suspended and shall not be renewed, nor shall any license or registration be thereafter issued in the name of the person, including any person not previously licensed, unless and until every such judgment is satisfied in full or to the extent provided by this article, and until the person gives proof of financial responsibility subject to the exemptions stated in § 28-1162 and § 28-1165.

B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article.

ARS § 28-1164. Payments sufficient to satisfy requirements.

A. Judgments referred to in this article shall, for the purpose of this chapter only, be deemed satisfied upon compliance with one of the following:

1. When five thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident.

2. When, subject to the limit of five thousand dollars because of bodily injury or death of one person, the sum of ten thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident.

3. When one thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

B. Payments made in settlements of claims because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section.

ARS § 28-1165. Installment payment of judgments; default.

A. A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

B. The superintendent shall not suspend a license, registration or nonresident operating privilege, and shall restore any license, registration or nonresident operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

C. In the event the judgment debtor fails to pay an installment as specified by the order, then upon notice of

the default, the superintendent shall forthwith suspend the license, registration or nonresident operating privilege of the judgment debtor until the judgment is satisfied, as provided in this chapter.

IN THE

SUPREME COURT OF THE UNITED STATES
October Term, 1970

No. 5175

ADOLFO and EMMA PEREZ,
Petitioners,

v.

DAVID H. CAMPBELL, Superintendent, Motor Vehicles Division, Arizona Highway Dept., etc., et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF THE NATIONAL ORGANIZATION FOR WOMEN AS AMICUS CURIAE

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of Counsel

IN THE
SUPREME COURT OF THE UNITED STATES

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v.

David Campbell, Superintendent,
Motor Vehicle Division, Arizona
Highway Dept., etc., et al.,
Respondents

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

Motion for Leave to File a Brief Amicus Curiae on Behalf of Petitioner, Emma Perez, by the National Organization for Women

Leave is requested by the National Organization for Women to file a brief amicus curiae in the above captioned case for the following reasons.

Emma Perez, solely by virtue of her status as wife in a community property

state has been and is deprived of the valuable right to drive an automobile.

The deprivation of Emma's driving privileges effects not Emma alone but also has wide impact as to others similarly situated.

Because the primary emphasis in the court below and the primary emphasis here is on the bankruptcy issue, and Emma's claim, perforce, is a secondary issue, it has not had and will not have as thorough an analysis as it merits.

Therefore, the National Organization for Women respectfully requests this Court to grant leave to file this brief amicus curiae.

The consent of all parties herein has been requested. The petitioners have given their consent. The respondents have refused their consent.

Respectfully submitted,

Heather Sigworth

Heather Sigworth
College of Law
University of Illinois
Urbana, Illinois

Attorney for the National
Organization for Women

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BRIEF OF THE NATIONAL ORGANIZATION FOR WOMEN AS AMICUS CURIAE

STATEMENT OF INTEREST

The National Organization for Women (N.O.W.) founded in 1966 has 5,000 women and men members. The organization is dedicated solely to securing for all women equal rights with men. N.O.W. believes that a society cannot call itself civilized, that it does damage to its economy, distorts its social values, and demeans its system of justice

when half of its citizens suffer abridgement of their civil rights.

Emma Perez, a petitioner in the instant case has been deprived of the valuable, and indeed almost essential right, Schecter v. Killingsworth, 93 Ariz. 273, 380 P.2d 136 (1963), to drive a car merely because of her status as a wife in a community property state.

N.O.W. believes that the essential unfairness shown to Emma Perez does not stop here, but has important implications for other wives in community property states. Under Arizona community property law Emma has no managerial or decision making powers and no control of the community assets; she could neither control the operation of the Perez automobile nor insure the community, yet the decision of the Court of Appeals would impose upon her the responsibility for her husband's operation of the automobile and for his failure to obtain insurance.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Article 1, Section 9, Clause 3

No Bill of Attainder or ex post facto law shall be passed.

Fourteenth Amendment

§1 . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Arizona Revised Statutes Annotated (1956)

Section 28-1142A (as amended, Supp. 1970)

A. The superintendent shall, within sixty days after the receipt of a report of a motor vehicle accident within this state which has resulted in bodily injury or death or damage to the property of any one person in excess of one hundred dollars, suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in such accident, or, if the operator is a non-resident, the privilege of operating a motor vehicle within

this state, or, if the owner is a nonresident, the privilege of the use within this state of any motor vehicle owned by him, unless such operator or owner or both shall deposit security in a sum which is sufficient in the judgment of the superintendent to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against the operator or owner . . . .

. . . .

Section 28-1162A

A. The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and §28-1165.

Section 28-1163B

B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article.

Section 28-1165

A. A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments and the court, in its

discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

B. The superintendent shall not suspend a license, registration or nonresident operating privilege, and shall restore any license, registration or nonresident operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

C. In the event the judgment debtor fails to pay an installment as specified by the order, then upon notice of the default, the superintendent shall forthwith suspend the license, registration, or non-resident operating privilege of the judgment debtor until the judgment is satisfied, as provided in this chapter.

Section 25-211B

B. During coverture, personal property may be disposed of by the husband only.

Section 25-213A & B & C

A. All property, real and personal, of the husband, owned or claimed

by him before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is his separate property.

B. All property, both real and personal, of the wife, owned or claimed by her before marriage, and that acquired afterward by gift, devise or descent, and also the increase, rents, issues and profits thereof, is her separate property.

C. The earnings and accumulations of the wife and the minor children in her custody while she lives separate and apart from her husband are the separate property of the wife.

QUESTION PRESENTED

May the State of Arizona deprive a wife of her right to drive simply because her husband was involved in an automobile accident.

STATEMENT OF FACTS

Adlopho Perez was driving alone on July 8, 1965, in an automobile registered in his name alone. Emma Perez who was and is the wife of Adolpho was not in the car. Adolpho's car collided with one owned by Leonard and Janice Pinkerton.

At the time of the accident, Adolpho Perez did not have automobile liability insurance.

Adolpho's driver's license, but not Emma's,was suspended pursuant to §28-1142A. At the end of one year, no civil suit having been filed, Adolpho applied for and secured the return of his license. Emma retained her license throughout this period because §28-1142A. A.R.S. operates to suspend only "the license of each operator and all registrations of each owner . . . ."

In 1966 suit was commenced by the Pinkertons against Adolpho and Emma as husband and wife. In 1967 Adolpho confessed judgment. Emma, too, confessed judgment, but solely because she was obliged to do so under Arizona community property law. Perez v. Campbell, 421 F.2d 619, 623 (1970) citing Donato v. Fishburn, 90 Ariz. 210, 367 P.2d 245 (1961). The community was unable to pay the judgment because of poverty. Emma and Adolpho filed petitions in bankruptcy in 1967. Their debts, including the judgment owed the Pinkertons,

were discharged.

Then, although for more than a year Adolpho had been deemed legally competent to drive, because of the unsatisfied judgment his license was suspended in 1968. This time Emma's license to drive was taken from her as well, allegedly under authority of A.R.S. §28-1162A. This statute authorizes the Director of Motor Vehicles to suspend the driver's license of a "person against whom the judgment was rendered." Emma is such a "person" solely because she was the wife of Adolpho, the tortfeasor, and was obliged to confess judgment under Arizona community property law.

At this moment Emma Perez, who, for all that is shown in the record, is a careful and fault-free driver, is without her license solely because she is the impecunious wife of an impecunious, negligent driver in a community property state.

SUMMARY OF ARGUMENT

It is appropriate to invoke the awesome power of the Constitution when a state has stepped beyond the legitimate boundaries of its police power to deprive one of its citizens of a valuable right. It is all the more appropriate when the citizen is powerless by any amount of diligence to avoid the result.

Revoking the driver's license of a non-negligent wife who, under local community property law, was obliged to confess judgment along with her negligent husband, Perez v. Campbell, 419 F.2d 619 (1970); Donato v. Fishburn, 90 Ariz. 210 367 P.2d 245 (1961), offends against constitutional prohibitions.

First, infliction of such penalty upon the non-negligent wife without benefit of hearing or trial denies her due process of law. Indeed the most elementary legal inquiry would have revealed that Emma Perez had committed no offense against the state's traffic laws, could not have prevented her husband's negligence, and could not have released community funds to satisfy the community debt incurred by her husband's negligence.

Second, a wife who can neither control her husband's use of the community automobile (A.R.S. §25-211B) nor expend community funds to secure automobile liability insurance (Id.) is plainly powerless to escape from the operation of the state's Financial Responsibility Act. Thus she is a member of an inescapable class of wives in community property states; punished without personal fault. The application of the Act to her is, therefore, a bill of attainder. United States v. Brown, 381 U.S. 437 (1965); United States v. Lovett, 328 U.S. 303 (1946).

Third, the class of innocent and powerless wives in community property states bears no rational relationship whatsoever to the purpose of the Financial Responsibility Act which is to afford to injured motorists a remedy for collecting their judgments. The revocation of Emma Perez' driver's license by virtue of her membership in this class is invidiously discriminatory and denies equal protection of law.

ARGUMENT

I.

THE STATE SHOULD NOT REVOKE THE CITIZEN'S RIGHT TO DRIVE WITHOUT COMPELLING REASON.

Without stopping to decide whether a driver's license is a property right within the meaning of the due process clause, it is certain that whatever its label, it has great value. The Arizona Supreme Court has determined that it is a right, not a mere privilege. Schecter v. Killingsworth, 93 Ariz. 273, 280, 380 P.2d 136, 140 (1963).

> In this day, when the motor vehicle is such an important part of our modern day living, when the use of the vehicle is so essential to both a livelihood and the enjoyment of life, this Court recognizes that the use of the public highways is a right which all citizens posses, subject, of course, to reasonable regulation under the police power of the sovereign. Id. at 280, 380 P.2d at 140.

The Congress as well has recognized the need for transportation.

> . . . [T]he Congress finds that the rapid urbanization and the continued dispersal of population and activities within urban areas has made the ability of

> all citizens to move quickly and at a reasonable cost an urgent national problem . . . . Urban Mass Transportation Assistance Act of 1970 (P.L. 91-453).

What then is the compelling interest which prompted the State of Arizona to take away the license of the innocent, non-negligent wife of an impecunious, negligent husband?

The Court below in its opinion, Perez v. Campbell, 421 F.2d 621 at 624, says the Act "bears a real and substantial relationship to public safety." But this is not so. The relationship is tenuous at best. This is evident from the fact that careless and dangerous drivers of means are unaffected by the Financial Responsibility Act. It operates only against indigent drivers.

> The Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons.
>
> . . . .
>
> . . . [T]he promotion of highway safety is not the primary objective of this particular law. Schecter v. Killingsworth, 93 Ariz. 273, 281, 380 P.2d 136, 140 (1963).

What the Arizona Supreme Court had to say about the general import of the Financial Responsibility Act applies with greater force to A.R.S. §28-1162A under which Emma's license was suspended. Plainly the sole purpose of this Section is to provide a creditor's remedy beyond those normally available to a judgment creditor; it may inferentially serve to prevent innocent, injured motorists from being forced onto the welfare rolls. Escobedo v. State Dept. of Motor Vehicles, 35 Cal.2d 870, 222 P.2d 1 (1950); Schecter v. Killingsworth, 93 Ariz. 273, 280, 281, P.2d 136, 140 (1963).

Whether or not the creation of what amounts to a super-judgment collection agency in the State Capitol solely for the benefit of a certain class of judgment creditors can be said to be a valid exercise of the state's police power, nevertheless, the application of the statute to Emma is constitutionally improper for the following reasons.

II.

THIS APPLICATION OF THE FINANCIAL RESPONSIBILITY ACT IS A BILL OF ATTAINDER AND A DENIAL OF DUE PROCESS

The holding that suspension of a wife's driver's license because her uninsured husband negligently operated the community vehicle is within the logic of Kesler and Reitz is based on a misunderstanding of Community Property Law.

The Court's conclusion that any differences between the legal position of Emma and that of her negligent husband constitutesa distinction without significance is based on three fallacious arguments. First, the Court contends that Emma could have avoided a license suspension based on her husband's negligence by purchasing an automobile as separate rather than community property. Perez v. Campbell, 421 F.2d 619, 623 (9th Cir. 1970). Second, it contends that Emma's legal status "is closely analogous to that of an automobile owner who permits another to drive it." Id. Finally, it contends that the legislation permitting, in effect and as interpreted, suspension of her license as a result of her husband's

negligence, "bears a real and substantial relationship to public safety on the Arizona higways." Id. at 624. All of these contentions depend on a mistaken view of a wife's property rights in a community property state such as Arizona.

Section One

The Court Below Misapplied Community Property Law

The Court states:

> The husband, or the wife, if each so desired, could purchase an automobile with separate funds and in such case the automobile would be the separate property of the purchaser. The negligent operation of such an automobile on separate business would not call into question the liability of the other spouse, nor the cancellation of the latter's license. Id. at 623.

Unfortunately, separate funds are highly unlikely to exist. Separate property consists only of property owned or claimed by either spouse before marriage, and that acquired afterward by gift, devise or descent. A. R. S. §25-213A & B. (Other minor provisions are not here relevant). All other property acquired during marriage is community property, and the personalty may be disposed of by the husband only. A. R. S. §25-211. If a wife's right to drive an automobile is made to depend on her ownership of separate funds, it will have to depend, then,

on her ability to solicit gifts and on the financial status of her dead relatives.

Not only is most of the property acquired during marriage, as a practical matter, clearly community property, but also all property acquired during marriage is presumptively community property. Porter v. Porter, 101 Ariz. 131, 416 P. 2d 564 (1966), cert. denied, 386 U. S. 957 (1967); Anderson v. Anderson, 65 Ariz. 184, 177 P. 2d 227 (1947). It has even been said that all property found in the possession of the spouses during marriage is presumptively community property. Tyson v. Tyson, 61 Ariz. 329, 149 P. 2d 674 (1944).

Moreover, this presumption is difficult to rebut, the evidence needed being variously characterized as strong, satisfactory, convincing, clear and cogent, or nearly conclusive. Porter v. Porter, supra; Kennedy v. Kennedy, 93 Ariz. 252, 379 P. 2d 966 (1963); Smith v. Smith, 71 Ariz. 315, 227 P. 2d 214 (1951); Arizona Cent. Credit Union v. Holden, 6 Ariz. App. 310, 432 P. 2d 276 (1967). Furthermore, separate funds which are comingled and not clearly traceable become community property. Franklin v. Franklin, 75 Ariz. 151, 253 P. 2d 337 (1953). And separate funds treated as community property become community even if they are traceable. Laughlin v. Laughlin, 61 Ariz. 6, 143 P. 2d 336 (1943).

The chances that a middle-class spouse would both come into possession of separate funds, and keep them sufficiently traceable to satisfy the presumption are remote.

The chances of a wife whose husband runs afoul of the Financial Responsibility laws

would do so are infinitesimal.

It could be argued that the spouses could agree that community property be held as separate property, and the wife purchase her automobile out of separate property. This argument entails several difficulties. First, at the time before the accident, pre-1965, it was not at all clear that this could be done. Not until 1969 did the Arizona Supreme Court hold that the community was severable on post-nuptial agreement of the parties. In re Estate of Harber, 104 Ariz. 79, 449 P. 2d 7 (1969). In any case, this is not the sort of legal nicety of which one about to become innocently involved with the Financial Responsibility laws is likely to be aware. Even if she were aware of it, it would hardly occur to her to sever the community in order to avoid the result in Perez v. Campbell -- a result that could not be predicted since it rests on clear misinterpretation of community property law. Furthermore, there is a practical consideration that reveals an absurdity in the Court's position reaching, perhaps, an equal protection objection. It is clear, of course, that a Financial Responsibility Act does not discriminate invidiously simply because it affects poor people more harshly than it does rich ones. Watson v. Div. of Motor Vehicles, 212 Cal. 279, 298 P. 481 (1931). Cf., Ex parte Lindley, 108 Cal. App. 258, 291 P. 638 (1930). However, the Perez Court's solution to the wife's problem imposes a double burden. Not only will the law affect her harsly because she is poor (which she could not avoid, as will be shown in Section Two of this argument), but also the Court would

require her to buy a second, separate car to avoid its operation. To create a class of poor, non-negligent wives who must buy second cars as a precaution against having their driver's licenses revoked would seem sufficiently irrational to violate even the traditional equal protection requirements of Watson, supra.

The most compelling reason against such a requirement is the need for the husband's concurrence. A wife cannot avoid revocation of her driver's license by simply agreeing with herself that the automobile bought with originally community funds is her separate property; she must get her husband to agree. She cannot take the Court's suggested remedial action on her own, yet she is deprived of her license without being able to avoid the result.

It is true that the husband would not have been able to transmute a car bought with community funds into separate property without the wife's concurrence, but then he could have avoided the result by buying insurance on the community car, which she could not have done. See Section Two, infra; see also Perez v. Campbell, 421 F. 2d 619. 624 (1970). The wife's inability to protect herself by the very action suggested by the Court indicates that the applicability of the logic of Kesler and Reitz to a non-negligent wife who owns only her community interest in the uninsured automobile is not as obvious as the Ninth Circuit Court of Appeals thought it to be. Kesler v. Dept. of Public Safety, 369 U. S. 153 (1962); Reitz v. Mealy, 314 U. S. 33 (1941)

Section Two

The Effect of the Act is a Denial of Due Process

The Court of Appeals further relied on the cases that have held that a non-negligent owner's license may constitutionally be revoked on the authority of similar Financial Responsibility laws, holding that Emma Perez' position as a community owner was analogous to them. See e.g. In re Opinion of Justices, 251 Mass. 569, 147 N.E. 681, (1925); Sullivan v. Price, 49 Ariz. 19, 63 P.2d 653, 108 A.L.R. 1156 (1937); Continental Cas. Co. v. Phoenix Constr. Co., 46 Cal. 2d 423, 296 P.2d 801, 57 A.L.R. 2d 914 (1956); Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200, 35 P.2d 359 (1934).

It is important to note that in Sheehan and other similar cases the owner was indeed the owner of an automobile as separate property. These decisions may be sound where the owner has power to give or withhold his consent. But, Emma's position is not analogous to the position of the non-negligent owners in those cases cited, or to those

in all cases researched) in two critical aspects.

First, a wife owning only her community share of an automobile has no such choice to exercise against her husband -- or, indeed, in theory, against anybody else. The husband, under Arizona law, "is the head of the family and its agent in the control and management of the community." Fee v. Arizona State Tax Comm'n, 55 Ariz. 67, 70, 98, P.2d 467 (1940). The Arizona Court has further characterized the husband as the head and master of the community. City of Phoenix v. State, 60 Ariz. 369, 137 P.2d 783 (1943). Taking even this one circumstance into account, it is difficult to see how the Court could feel that Emma's argument presented "a distinction without significant difference." Perez v. Campbell, 421 F. 2d 619, 623 (1970).

Second, in all those cases, the owner could have protected himself by insuring his automobile.

In Mac Quarrie v. Mc Laughlin, 294 F. Supp. 176 (D. Mass. 1968) aff'd, 394 U.S. 456 (1969) an owner lent his car to a person who became involved in an accident. Neither owner nor driver carried automobile liability insurance. In upholding the revocation of the owner's license, the district court said the revocation violated neither the equal protection clause nor the bill of attainder clause.

> If an automobile owner can, in effect, be compelled to guarantee the honesty of the person to whom he loans his car [referring to forfeitures where the car is used to transport illicit goods] we see no constitutional impediment to compelling him to guarantee his agent's due care when the offered alternative, or escape, is the purchase of property damage insurance. Id. 294 F.Supp. 176, 178.

Plainly, in McQuarrie, Sheehan, and similar cases, the owner has an escape route available to him. One purpose of Financial Responsibility laws is to encourage owners and drivers to obtain liability insurance. City of Toledo v. Bernoir, 18 Ohio St.2d 94, 247 N.E. 2d 740 (1969). And just plainly that purpose is not served in the instant case

case because Emma Perez could not have done so. "During coverture, personal property may be disposed of by the husband only." A.R.S. §25-211B. This has been interpreted to mean, in effect, "may be disposed of only by the husband," (see e.g., Mortensen v. Knight, 81 Ariz. 325, 305 P.2d 463 (1956)), and as giving him management and control of the community. Id. Moreover, it has been explicitly held that attempts by the wife on her own accord and without authority from her husband to control and dispose of the community personalty are ineffective. Bristol v. Moser, 55 Ariz. 185, 99 P.2d 706; Richards v. Warenkros, 14 Ariz. 488, 131 P.154 (1913). Again if a wife cannot prevent revocation of her license by being scrupulously non-negligent, by controlling the use of the community car, or by insuring the car, these distinctions must make a difference to the resolution of the due process issues raised in Reitz, and the state cases cited on p.19 of this brief. On this same principle -- sole community control in the husband -- the wife cannot even satisfy the judgment while she continues living with her husband. She could live separate and

apart from her husband and attempt to satisfy the judgment out of her own earnings, which would then be separate property. A.R.S. §25-213C. She could also divorce her husband, and attempt to satisfy the judgment out of any property settlement and support she might get, and her own earnings. Better yet, she could have divorced him before he committed the negligent act and avoided both revocation and liability for the judgment. It hardly seems necessary to cite authority that encouraging such actions serves no reasonable state purpose of highway safety, and contravenes the ancient state policy of encouraging marriage and discouraging divorce. Goodwin v. Goodwin, 47 Ariz. 157, 54 P.2d 268 (1936).

Section Three

The decisions that uphold the constitutionality of state statutes similar to that being interpreted in this case (A.R.S. §§28-1162, 28-1163B and 28-1165) have uniformly looked to the purpose of the Financial Responsibility legislation, and then looked to

the effect of its enforcement to see if it reasonably forwarded any of those purposes. For example:

> The use of the public highways by motor vehicles, with its consequent dangers, renders the regulation apparent . . . . Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. Some require insurance . . . . New York chose to obtain the same end by providing for the revocation or suspension of a license if the holder is adjudged guilty of negligent driving . . . . As the court below has held, the effect of the statute . . . was to make the license privilege a form of protection against damage to the public inflicted through the licensee's carelessness. Reitz v. Mealey, 314 U.S. 33, 37 (1941).

See also cases cited on page 19of this brief. The Arizona Supreme Court has characterized a companion provision of the Arizona Financial Responsibility law as being based upon the necessity for

> . . . providing of security against uncompensated damages arising from operation of motor

> vehicles on our highways. Schecter v. Killingsworth, 93 Ariz. 273, 285, 380 P.2d 136 (1963).

Presumably the statutes involved in this case (A.R.S. §§28-1162, 28-1163B and 28-1165), providing for suspension of an uninsured motorist's license after a judgment has been entered against him have the same purpose.

Revoking the negligent husband's license clearly makes some sense. Revocation may encourage him to satisfy the judgment. It might make sense to revoke a non-negligent husband's license where a judgment has gone against his negligent wife. Revocation might encourage him to release community funds to satisfy the judgment. But it makes no sense at all to revoke the license of a non-negligent wife in an effort to encourage her to satisfy the judgment resulting from her husband's negligence[1]

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1. Emma confessed judgment, but as the Court points out, "[u]nder Arizona law, she had no alternative." Perez v. Campbell, 421 F.2d 619 623 (1970), citing Donato v. Fishburn, 90 Ariz. 210, 367 P.2d 245 (1961).

when her only assets are community property of which she has no right to dispose. Will the due process clause permit the state to advance its policy by imposing liability on an innocent wife, who could have done nothing to remedy her position?

Section Four

The Application of the Act Constitutes A Bill of Attainder

The Court below thought it irrevelant that Emma could not insure the community. Perez v. Campbell, 421 F.2d 619, 624.

But the fact that this and all other escape routes were foreclosed to her is highly relevant. " A deprivation is considered preventive if it is 'escapable' -- if people affected can avoid harm by acting in accordance with the statute." Note, The Bill of Attainder Clauses and Legislative and Administrative Suppression of 'Subversives', 67 Colum. L. Rev. 1490 (1967). In fact, assuming arguendo that there were some reasonable relationship between the state's purpose and the class of wives, the reasonableness test would not save the classification from attack as a bill of attainder.

> The doctrine of reasonable classification has been developed and refined not in bill of attainder cases but in cases in which statutes have been attacked as denying equal protection of the law . . . . The specificity barred by the bill of attainder clause admits to no such test of reasonableness. That clause flatly denies Congress [or the states] the power to designate the particular individuals who will be subject to sanctions of a statute. Comment, The Supreme Court's Bill of Attainder Doctrine: A Need for Clarification, 54 Calif. L. Rev. 212, 234 (1966).

A statute is a bill of attainder if it punishes named individuals or a group of individuals without judicial trial. United States v. Lovett, 328 U.S. 303 (1946).

Because Emma has no management powers over community personalty (A.R.S. §25-211B), she was powerless to prevent her husband from driving the car and equally powerless to insure the community. Put simply, she was and is a member of an inescapable and helpless class.

She has been punished.

As the safety responsibility

> Act carries penalties for its violation it is penal in character in the aspect here presented application to a class exempted by the statute and not remedial. Such a law is to be interpreted strictly against the State and liberally in favor of the citizen. 50 Am. Jur., Statutes, sections 14, 15, 16, 407, 408, and 409. See also Tavegia v. Bromley, 67 Wyo. 93, 214 P.2d 975. City of Phoenix v. Lane, 76 Ariz. 240, 243, 263 P.2d 302, 303 (1953).

The Arizona Supreme Court is no doubt correct in characterizing the Act as penal. Thus, to the extent that decision below was based upon decisions such as Escobedo v. Dept. of Motor Vehicles, 35 Cal. 2d 870, 222 P.2d 1 (1950) and Sheehan v. Division of Motor Vehicles, 140 Cal. App. 200, 35 P.2d 359 (1934) interpreting California law, such reliance was misplaced for the reason that California's Financial Responsibility law has been deemed remedial in nature. Continental Cas. Co. v. Phoenix Const. Co., 46 Cal. 2d 423, 296 P.2d 801 (1956).

And this Court has placed no narrow limit on the meaning of punishment. "It would be archaic to limit the

definition of 'punishment' to 'retribution'. Punishment serves several purposes; retributive, rehabilitative, deterrent -- and preventive." United States v. Brown, 381 U.S. 437 (1965).

Emma, a member of an inescapable class, has been punished under a statute penal in character. "Legislative acts, no matter what their form, that apply either to named individuals or to easily ascertainable members of a group in such a way as to inflict punishment on them without judicial trial are bills of attainder prohibited by the Constitution." United States v. Lovett, 328 U.S. 303 (1946.)

III

THE ACT IN ITS APPLICATION DENIES EQUAL PROTECTION

The application of the Financial Responsibility Act to Emma denies her equal protection for two reasons.

First, she has suffered discrimination solely by reason of her membership in the class of wives, who, as we have seen, are unable to extricate themselves from the results of the Act. This classification bears no reasonable relationship to the purpose of the Act, whether it be collection of judgments or promotion of safety.

Since Yick Wo v. Hopkins, 118 U. S. 356 (1886) it has not been enough that a statute appears to be constitutionally sound.

> Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discrimination between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. Id. at 373-374.

Second, a penalty has been imposed on Emma although she has broken no law. As shown in Section Two, p.19 supra, Emma's situation is not analogous to that of other owner-driver cases for the reason that she had no control

over community personalty. Neither has she committed any offense against the Financial Responsibility laws save that of being impoverished. Yet the laws are uniformly so-called "first-bite" laws.[1] They do not come into operation until an uninsured driver has become involved in an accident.

In a recent decision this Court defined again the boundaries of the equal protection clause.

> In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. . . . A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it. [Citations omitted].
>
> . . . .
>
> . . . It is enough that the State's action be rationally based and free from invidious discrimination. Dandridge v. Williams, 90 S. Ct. 1153, 1161-1162 (1970).

Is there a conceivable state of facts to justify ap-

1. "The underlying assumption of these laws was that they would promote safety by isolating bad drivers after the first accident and making other drivers more careful due to the threat of requiring insurance in the event of an accident." L. Timm, A Survey of Financial Responsibility Laws and Compensation of Traffic Victims: A Proposal for Reform, 21 Vand. L. Rev. 1050, 1051 (1967-1968).

plication of the Act to a class comprised of non-negligent wives who, because of local community property laws, are powerless to prevent negligence on the part of their husbands or to insure the community or to pay a judgment rendered against the community?

The principal purpose of the Act is to promote payment of judgments. Emma can not release community funds for this purpose. A secondary purpose may be to encourage owners and drivers to secure automobile liability insurance. Emma can not expend community funds for this purpose.

Since neither of the state's avowed purposes is served by revoking Emma's license, it seems plain that the application of the Act to her is invidiously discriminatory.

CONCLUSION

A citizen, helpless because of the state's community property law to prevent the consequences of the Financial Responsibility Act, has lost the right to drive.

This deprivation is constitutionally impermissible as a bill of attainder, a denial of due process, and a denial of equal protection.

We respectfully urge this Court to vacate the decision of the Ninth Circuit Court of Appeals in Perez v. Campbell, 421 F. 2d 619 (1970).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served upon

GARY K. NELSON
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one copy of the foregoing Brief; and upon

WINTON WOODS
College of Law
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one copy of the foregoing Brief, this 25th day of November, 1970.

Heather Sigworth

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Attorney for the National
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IN THE SUPREME COURT OF THE
UNITED STATES

October Term, 1970

No. 5175

ADOLFO PEREZ, ET UX.,

Petitioners,

vs.

DAVID H. CAMPBELL, SUPERINTENDENT,
MOTOR VEHICLE DIVISION, ARIZONA
HIGHWAY DEPARTMENT, ET AL.,

Respondents.

ON WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF

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TABLE OF AUTHORITIES

Cases:

Arizona Revised Statutes (A.R.S.)

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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF

OPINION BELOW

Respondents adopt Petitioners' statement concerning the identity of the Opinion Below.

JURISDICTION

Respondents adopt Petitioners' Statement of Jurisdiction.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

Respondents adopt Petitioners' statement of the Constitutional Provisions and Statutes Involved except add thereto the following:

Arizona Revised Statutes Sec. 28-1161(A):

> "A. When a person fails within sixty days to satisfy a judgment, it shall be the duty of the clerk of the court, or of the judge of a court which has no clerk, in which the judgment is rendered within this state, to forward to the superintendent immediately after the expiration of such sixty days, a certified copy of the judgment."

Arizona Revised Statutes Sec. 28-1163:

> "A. The license, registration and nonresident operating privilege shall remain suspended and shall not be renewed, nor shall any license or registration be thereafter issued in the name of the person, including any person not previously licensed, unless and until every such judgment

is satisfied in full or to the extent provided by this article, and until the person gives proof of financial responsibility subject to the exemptions stated in Sec. 28-1162 and 28-1165.

B. A discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article."

Arizona Revised Statutes Sec. 28-1164:

"A. Judgments referred to in this article shall, for the purpose of this chapter only, be deemed satisfied upon compliance with one of the following:

1. When ten thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of bodily injury to or death of one person as the result of any one accident.

2. When, subject to the limit of ten thousand dollars because of bodily injury or death of one person, the sum of twenty thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of bodily injury to or death of two or more persons as the result of any one accident.

3. When five thousand dollars has been credited upon a judgment or judgments rendered in excess of that amount because of injury to or destruction of property of others as a result of any one accident.

B. Payments made in settlements of claims

because of bodily injury, death or property damage arising from a motor vehicle accident shall be credited in reduction of the amounts provided for in this section."

Arizona Revised Statutes Sec. 28-1165:

"A. A judgment debtor upon due notice to the judgment creditor may apply to the court in which the judgment was rendered for the privilege of paying the judgment in installments and the court, in its discretion and without prejudice to any other legal remedies which the judgment creditor may have, may so order and fix the amounts and times of payment of the installments.

B. The superintendent shall not suspend a license, registration or nonresident operating privilege, and shall restore any license, registration or nonresident operating privilege suspended following nonpayment of a judgment, when the judgment debtor gives proof of financial responsibility and obtains an order permitting the payment of the judgment in installments, and while the payment of any installment is not in default.

C. In the event the judgment debtor fails to pay an installment as specified by the order, then upon notice of the default, the superintendent shall forthwith suspend the license, registration or nonresident operating privilege of the judgment debtor until the judgment is satisfied, as provided in this chapter."

QUESTION PRESENTED FOR REVIEW

Is the Arizona Statute, A.R.S. Sec. 28-1163(B) unconstitutional as violative of the Supremacy Clause?

STATEMENT OF THE CASE

Respondents adopt Petitioners' Statement of the Case with the exception that Respondents object to the characterization of the judgment (as found in paragraph one of Petitioners' Statement of the Case) as a judgment versus the marital community, and state that the judgment was against Adolfo Perez and Emma Perez.

ARGUMENT

I

THE ARIZONA STATUTE, WHICH PETITIONERS CHALLENGE AS VIOLATIVE OF THE UNITED STATES CONSTITUTION'S SUPREMACY CLAUSE, IS NOT UNCONSTITUTIONAL IN ITS APPLICATION TO EITHER OF THE PETITIONERS HEREIN.

Petitioners allege that the various states may not legislate contrary to the Bankruptcy Act. In support thereof, they cite International Shoe Co. vs. Pinkus, 278 U.S. 261, 265, 73 L.Ed. 318, 320, 49 S.Ct. 108, 13 Am. Bankr. R. (n.s.) 108 (1929), which is not relevant to the issues here. The Pinkus case merely held that Arkansas' Insolvency Statute, a local version of bankruptcy, was in direct conflict and competition with the Federal Act. That case dealt with a substantially different statute from the statute[1] under attack in

[1] A.R.S. Sec. 28-1163(B)

the instant case. The statute attacked herein is not in conflict with the Bankruptcy Act, but in fact recognizes the Act's existence, jurisdiction and powers, and merely clarifies that the state's valid police power will not be dissolved or thwarted solely because the invoking device (an unsatisfied tort-motor vehicle judgment) is also the source of a creditor's claim, the latter being dischargeable by the Bankruptcy Act.

Just as Congress has provided that certain debts may not be discharged in bankruptcy[2], the courts have recognized that merely because a state law may affect a debtor-creditor relationship does not necessarily mean that such law conflicts with the Bankruptcy Act. In Kesler vs. Department of Public Safety, 369 U.S. 153, 82 S.Ct. 807, 7 L.Ed.2d 641 (1962), this Court stated:

> "Section 17 of the Bankruptcy Act, 11 U.S.C. Sec. 35, provides that 'A discharge in bankruptcy shall release a bankrupt from all of his provable debts,' with exceptions not here material. See also 11 U.S.C. Sec. 1 (15). A discharge relieves the bankrupt 'from legal liability to pay a debt that was provable,' Zavelo v. Reeves, 227 U.S. 625, 629 (1913); it is a valid defense in an action brought in a State court to recover the debt. A State cannot deal with the debtor-creditor relationship as such and circumvent the aim of the Bankruptcy Act in lifting the burden of debt from a worthy debtor and affording him a new start. The limitations imposed upon the states by the Act raise constitutional questions under the Supremacy Clause,

[2] Section 17 of the Bankruptcy Act, 11 U.S.C. Sec. 35.

Art. VI. Thus, a discharge does not free the bankrupt from all traces of the debt, as though it had never been incurred. This Court has held that a moral obligation to pay the debt survives discharge and is sufficient to permit a State to grant recovery to the creditor on the basis of a promise subsequent to discharge, even though the promise is not supported by new consideration. Zavelo v. Reeves, supra. The theory, the Court declared, is that 'the discharge destroys the remedy but not the indebtedness,' 227 U.S., at 629. And in Spalding v. New York ex rel. Backus, 4 How. 21 (1846), under an earlier bankruptcy law, the Court held that a discharge did not prevent the State from collecting a fine for contempt in violation of an injunction issued to aid in the execution of a judgment debt, although the fine was turned over to the creditor. States are not free to impose whatever sanctions they wish, other than an action of debt or assumpsit, to enforce collection of a discharged debt. But the lesson Zavelo and Spalding teach is that the Bankruptcy Act does not forbid a State to attach any consequence whatsoever to a debt which has been discharged." 369 U.S. at 169, 170 and 171.

In Kesler, supra, this Court best explained the valid public purpose of Utah's statute which is substantially similar to the one under attack in the instant case.

"The problem of highway safety has concerned legislatures since the early years of the century. Utah, like other States, has responded to this problem by requiring the registration and inspection of vehicles in prescribing certain necessary equipment; by

requiring examination and licensing of operators and excluding unqualified persons from driving; by providing comprehensive regulations of speed and other traffic conditions; and by authorizing extra-territorial service of process on nonresident motorists involved in accidents within the State. And, like every other State, Utah has responded by enacting a financial-responsibility law.

Financial-responsibility laws are intended to discourage careless driving or to mitigate its consequences by requiring as a condition of licensing or registration the satisfaction of outstanding accident judgments, the posting of security to cover possible liability for a past accident, or the filing of an insurance policy or other proof of ability to respond in damages in the future. By 1915 a San Francisco ordinance required a bond or liability insurance for all buses; a number of other cities and States early enacted similar provisions. In 1925 Massachusetts forbade the registration of any motor vehicle without proof of adequate liability insurance or other evidence of ability to satisfy a judgment. Mass. Laws 1925, c. 346. That same year the Commissioners on Uniform Laws appointed a committee to consider a uniform compulsory insurance law. Handbook of the National Conference on Uniform State Laws. (1932), p. 261." 369 U.S. at 158 and 159.

In upholding the public purpose of the police power exercised through financial responsibility laws, Justice Frankfurter said:

". . . A State may property decide as forty-five have done, that the prospect of a judgment that must be paid in order to regain driving privileges

servies as a substantial deterrent to unsafe driving. We held in Reitz that it might impose this requirement despite a discharge, in order not to exempt some drivers from appropriate protection of public safety by easy refuge in bankruptcy. To make suspension of privileges dependent upon the creditor's request, as twenty-one have done, and as Congress has done for the District of Columbia, is nothing more than to make explicit what happens in the real world regardless of the statutory language. Even if the creditor-request provision makes suspension more likely, we see no reason why a State may not so provide in order that the deterrent be made more effective by authorizing the party most likely to be interested in the enforcement of the sanction to set it in motion. Nor do we think in excess of their power the action of thirty-five States that have attempted, as Congress has done, to authorize the creditor to lift and restore the suspension, or the forty-three that again as Congress, have provided that in the absence of creditor consent the suspension shall last forever unless the judgment is extinguished. To whatever extent these provisions make it more probable that the debt will be paid despite the discharge, each no less reflects the State's important deterrent interest. Congress had no thought of amending the Bankruptcy Act when it adopted this law for the District of Columbia; we do not believe Utah's identical statute conflicts with it either.

Utah is not using its police power as a devious collecting agency under the pressure of organized creditors. Victims of careless car drivers are a wholly diffused group of shifting

and uncertain composition, not even remotely united by a common financial interest. The Safety Responsibility Act is not an Act for the Relief of Mulcted Creditors. It is not directed to bankrupts as such. Though in a particular case a discharged bankrupt who wants to have his rightfully suspended license and registration restored may have to pay the amount of a discharged debt, or part of it, the bearing of the statute on the purposes served by bankruptcy legislation is essentially tangential." 369 U.S. at 173 - 174.

It should be noted in the foregoing quote that one of the primary areas of attack against the Utah statute was that the creditor had discretion to invoke governmental suspension powers. This discretion does not exist in Arizona since A.R.S. Sec. 28-1161(A) imposes notification as a mandatory duty irrespective of action on behalf of the judgment-creditor.

It is also interesting to note that, contrary to Petitioners' contention, Arizona does not require satisfaction of the judgment as a precondition to possessing a valid license or registration. In this regard A.R.S. Sec. 28-1165 provides a reasonable means of alleviating such suspension. The Court should note also that, as substantiated in the Appendix filed herein which contains in totality the record below, Petitioners have failed to afford themselves the opportunity to seek relief under A.R.S. Sec. 28-1165.

Petitioners have admitted throughout this proceeding that a state could validly require liability insurance as a prerequisite to the original issue of a

motor vehicle operator's license. Decisions supporting such a rule are Packard vs. Banton, 264 U.S. 140, 44 S.Ct. 257, 68 L.Ed. 596 (1924); Sprout vs. City of South Bend, 277 U.S. 163, 48 S.Ct. 502, 72 L.Ed. 833, 62 A.L.R. 45 (1928); Escobedo vs. State Department of Motor Vehicles, 222 P.2d 1, 35 Cal.2d 870 (1950); and Farmer vs. Killingsworth, 102 Ariz. 44, 424 P.2d 172 (1967). Petitioners readopt this position in their Brief filed with this Court.[3] Since the inception of this action, Respondents have been baffled as to how the Petitioners can rationally admit this and yet maintain that the less restrictive procedure challenged in the instant case is unconstitutional.

Petitioners contend that the valid public purpose upheld in Kesler is not applicable to the Arizona statute because in Schecter vs. Killingsworth, 380 P.2d 136, 93 Ariz. 273 (1963), the Arizona court did not utilize the deterrent factor as a basis of validity to the challenged statute. Such statement is misleading for the Arizona Supreme Court said:

> "The Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons. It accomplishes the objective by requiring proof of financial responsibility by those involved in an accident, either by a showing of insurance which covers the accident, or by requiring a bond or deposit of cash or securities. It may, as incidental purposes and effects, because of the threat of

[3] See footnote 6 at page 8 of PETITIONERS' BRIEF.

loss of driving rights following an uninsured accident, (1) encourage operators of motor vehicles to obtain liability insurance, and (2) encourage drivers to drive more carefully. Because the uninsured motorist can avoid the adverse effects of the statute without obtaining insurance, and without improving his driving practices (i.e. by putting up security -- here $425.00 -- or by obtaining a release from the injured party, or an agreement for payment of damages in installments) we cannot consider either the encouragement to obtain insurance or the improvement of safety conditions on the highway to be primary objectives of this law.

It is well recognized that the social objective of preventing financial hardship and possible reliance upon the welfare agencies of the state is a permissible goal of police power action. Home Accident Ins. Co. v. Industrial Commission, 34 Ariz. 201, 269 P. 501 (1928); Berberian v. Lussier, supra; Hadden v. Aitken, supra; Rosenblum v. Griffin, supra." (Emphasis added) 93 Ariz. at 280 and 281.

In accordance with the views expressed in Arizona are the cases cited in their opinion. Furthermore, in the case of Reitz vs. Mealey, 314 U.S. 33, 62 S.Ct. 24, 86 L.Ed. 21 (1941), this very Court recognized that such statutes may serve a valid purpose for reasons other than merely deterrent effects.

". . . The use of the public highways by motor vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice

is to register ownership of automobiles and to license their drivers. Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. . . ." (Emphasis added) 314 U.S. at 26.

Also see Rosenblum vs. Griffin, 197 A. 701, 89 N.H. 314 (1938).

Kesler also reindorses Respondents' argument that this Court has recognized more than the deterrent effect as a valid public purpose for such legislation.

". . . We held in Reitz that it might impose this requirement despite a discharge, in order not to exempt some drivers from appropriate protection of public safety by easy refuge in bankruptcy. . . ." 369 U.S. at 173.

The policies motivating the police powers as set out in Kesler, Reitz and Schecter are all within the purview of a valid, reasonable State purpose.

Petitioners state that enforcement of the statute challenged herein does not really accomplish the purpose which was intended. Such argument is mere speculation and improper to submit for this Court's consideration. In the case of Bibb vs. Navajo Freight Lines, 359 U.S. 520, 79 S.Ct. 962, 3 L.Ed.2d 1003 (1959), this Court, in discussing the constitutionality of a highway safety statute, stated:

"These safety measures carry a strong presumption of validity when challenged in court. If there are alternative ways of solving a problem,

> we do not sit to determine which of them is best suited to achieve a valid state objective. Policy decisions are for the state legislature, absent federal entry into the field. Unless we can conclude on the whole record that 'the total effect of the law as a safety measure in reducing accidents and casualties is so slight or problematical as not to outweigh the national interest in keeping interstate commerce free from interferences which seriously impede it' (Southern Pacific Company v. State of Arizona, supra, 325 U.S. at pages 775-776, 65 S.Ct. at page 1523) we must uphold the statute." 359 U.S. at 524.

It is respectfully submitted that this Court's function is to judge the constitutionality, not the wisdom, of the challenged legislation.

ARGUMENT

II

PETITIONER, EMMA PEREZ'S CONTENTIONS, AS THEY SEPARATELY APPLY TO HER DO NOT MAKE THE CHALLENGED STATUTE UNCONSTITUTIONAL IN ITS APPLICATION TO HER.

Petitioner, Emma Perez, contends in the alternative that even if the challenged statutes are not unconstitutional in their application to her husband, Adolfo Perez, they are unconstitutional in their application to her.

Respondents, first wish to make the record quite clear as to two points which appear to have misled the Ninth Circuit Court of Appeals. First, it is true that

Emma Perez was not in the vehicle with her husband Adolfo Perez at the time of the accident which eventually led to the suspension challenged herein; however, this by no means forecloses the possibility that Emma Perez was a party-defendant because of either misfeasance or nonfeasance on her own part.[4] Secondly, the Opinion as rendered by the Ninth Circuit Court of Appeals,[5] at least implies that Emma Perez was an indispensable party-defendant to the judgment under Arizona Law. This simply is not true and Petitioners admit this at pages 11 and 12 of their Brief wherein they state that Emma Perez "... was a proper nominal defendant and judgment debtor in the law suit. . . ."

Petitioner, Emma Perez, contends that she is not financially irresponsible. On this point the record speaks for itself. Financial irresponsibility is well illustrated by the fact that she did not possess an automobile liability insurance policy nor has she on this date qualified under any of the exemptions available (A.R.S. Sec. 28-1162 - 1165) to remove a judgment debtor from the "financially irresponsible" classification.

As previously stated, there is nothing in the record to foreclose the possibility that the nexus of the judgment against Emma Perez has its basis upon her own misfeasance or nonfeasance. Therefore, by confessing judgment (see page 3 of Appendix filed herein), especially since she was not an indispensable party to that action, she has waived any right she may have had to contend

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[4] A.R.S. Sec. 28-1102, subdivision 2, applies the suspension to a judgment arising out of ownership, maintenance or use.

[5] Perez vs. Campbell, 421 F.2d 619 (1970).

that her sole connection with this judgment is based upon the fact that she is the wife of Adolfo Perez. Upon the record before this Court, it is impossible to arrive at the factual conclusion for which she contends.

Assuming arguendo that Mrs. Perez is correct in her factual contention, this still does not make the challenged legislation unconstitutional in its application to her. Emma Perez claims that, because of the husband's managerial capacity concerning personal property under Arizona community property law, she could not obtain insurance with community funds. This results in the conclusion that if Emma Perez chooses to act independently of the co-petitioner, she can use only her separate funds to purchase insurance or relieve herself from the judgment. Once again, assuming this to be the case, does the allegation that she may have insufficient separate property to satisfy such an obligation or to make such insurance purchase render the statute unconstitutional in its application to her? Certainly not. As illustrated in Escobedo vs. State Department of Motor Vehicles, supra, the wealth or poverty of the judgment debtor does not affect the constitutionality of the statutes involved.

Petitioner, Emma Perez, asserts there is no valid State interest in levying the applicable sanctions against her. As stated in earlier portions of this Brief, a valid and primary purpose of the challenged statutes is to encourage payment to those persons suffering injury so as to lessen the possibility of having them placed on the welfare rolls. Since one of the purposes is to provide a stronger likelihood of such payment, all persons civilly responsible for such damages, should be subject to the sanctions imposed by these statutes.

Emma Perez contends that the application of the

challenged statutes to her is in fact punitive. Such a contention is not unique and rulings to the contrary have been rendered on numerous occasions.[6]

The Ninth Circuit Court of Appeals, due to its erroneous conclusions as to facts and applications of law, assumed that the validity of the suspension applied to Emma Perez must be adjudged because of her ownership of the Perez vehicle which was involved in the accident. Assuming that this Court arrives at the same conclusion, such a suspension based on ownership is no less unconstitutional in light of the valid police power purpose to be achieved. See Perez vs. Campbell, n.5.

CONCLUSION

Respondents urge this Court not to be overwhelmed with sympathy for Petitioners' alleged plight. It is important to remember that Petitioners have never sought relief under A.R.S. Sec. 28-1165 and it is also important to mention that their Brief contains not one reference to the suffering, economic and otherwise, of those persons whose injury gave rise to Petitioners' suspension. Respondents further urge this Court to consider that Petitioners admit "compulsory insurance"

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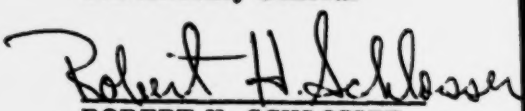
[6] Packard vs. Banton, 264 U.S. 140, 44 S.Ct. 257, 68 L.Ed. 596 (1924); Parker vs. State Highway Department, 24 S.C. 263, 78 S.E.2d 382 (1953); State vs. Parker, 81 Ida. 51, 336 P.2d 318 (1959); Thrasher vs. State, 94 Okl.Cir. 105, 231 P.2d 409 (1951); State vs. Pruett, 428 P.2d 43, 91 Ida. 537 (1967); In re France, 147 Mont. 283, 411 P.2d 732 (1966); Appeal of Lewis, 208 Okl. 610, 258 P.2d 173 (1953); May vs. Moore, 249 S.W.2d 518 (Ky. 1952); Haswell vs. Powell, 38 Ill.2d 161, 230 N.E.2d 178 (1967).

is constitutional and by the same reasoning must admit that were there no procedures available to a creditor to alleviate this suspension, it would be constitutional . How can Petitioners, in good faith, complain of less severe restrictions ?

For the reasons submitted, Respondents respectfully pray this Court to uphold the constitutionality of the challenged legislation.

GARY K. NELSON
The Attorney General



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ROBERT H. SCHLOSSER, Counsel for Respondents herein, certifies that three (3) copies of the foregoing Brief, in its entirety, was served upon Counsel for Petitioners in the following manner:

By certified mail, postage prepaid, return receipt requested, to:

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on the 6th day of January, 1971.

Robert H. Schlosser
ROBERT H. SCHLOSSER
Counsel for Respondents

SUBSCRIBED AND SWORN to before me this 6th day of January, 1971.

Virginia Meyer
Notary Public

My Commission Expires July 26, 1974

NOTE: Where it is deemed desirable, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.*, 200 U.S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

PEREZ ET UX. *v.* CAMPBELL, SUPERINTENDENT, MOTOR VEHICLE DIVISION, ARIZONA HIGHWAY DEPARTMENT, ET AL.

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 5175. Argued January 19, 1971—Decided June 1, 1971

The provision that "discharge in bankruptcy following the rendering of any such judgment [as a result of an automobile accident] shall not relieve the judgment debtor from any of the requirements of this article," contained in Ariz. Rev. Stat. § 28-1163 (B), part of the Motor Vehicle Safety Responsibility Act, which the Arizona courts have construed as having as "its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons," directly conflicts with § 17 of the Bankruptcy Act, which states that a discharge in bankruptcy fully discharges all but certain specified judgments, and is thus unconstitutional as violative of the Supremacy Clause. *Kesler* v. *Department of Public Safety*, 369 U. S. 153, and *Reitz* v. *Mealey*, 314 U. S. 33, have no authoritative effect to the extent they are inconsistent with the controlling principle that state legislation that frustrates the full effectiveness of federal law is invalidated by the Supremacy Clause. Pp. 7–19.

421 F. 2d 619, reversed and remanded.

WHITE, J., delivered the opinion of the Court, in which BLACK, DOUGLAS, BRENNAN, and MARSHALL, JJ., joined. BLACKMUN, J., filed an opinion concurring in the result as to petitioner Emma Perez and dissenting as to petitioner Adolfo Perez, in which BURGER, C. J., and HARLAN and STEWART, JJ., joined.

SUPREME COURT OF THE UNITED STATES

No. 5175.—October Term, 1970

Adolfo Perez et ux., Petitioners,
v.
David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 1, 1971]

Mr. Justice White delivered the opinion of the Court.

This case raises an important issue concerning the construction of the Supremacy Clause of the Constitution—whether Ariz. Rev. Stat. § 28–1163 (B), which is part of Arizona's Motor Vehicle Safety Responsibility Act, is invalid under that clause as being in conflict with the mandate of § 17 of the Bankruptcy Act, 11 U. S. C. § 35, providing that receipt of a discharge in bankruptcy fully discharges all but certain specified judgments. The courts below, concluding that this case was controlled by *Kesler* v. *Department of Public Safety*, 369 U. S. 153 (1962), and *Reitz* v. *Mealey*, 314 U. S. 33 (1941), two earlier opinions of this Court dealing with alleged conflicts between the Bankruptcy Act and state financial responsibility laws, ruled against the claim of conflict and upheld the Arizona statute.

On July 8, 1965, petitioner Adolfo Perez, driving a car registered in his name, was involved in an automobile accident in Tucson, Arizona. The Perez automobile was not covered by liability insurance at the time of the collision. The driver of the second car was the minor

daughter of Leonard Pinkerton, and in September 1966 the Pinkertons sued Mr. and Mrs. Perez in state court for personal injuries and property damage sustained in the accident. On October 31, 1967, the petitioners confessed judgment in this suit, and a judgment order was entered against them on November 8, 1967, for $2,425.98 plus court costs.

Mr. and Mrs. Perez each filed a voluntary petition in bankruptcy in Federal District Court on November 6, 1967. Each of them duly scheduled the judgment debt to the Pinkertons. The District Court entered orders on July 8, 1968, discharging both Mr. and Mrs. Perez from all debts and claims provable against their estates, including the Pinkerton judgment. 11 U. S. C. § 35; *Lewis* v. *Roberts*, 267 U. S. 467 (1925).

During the pendency of the bankruptcy proceedings, the provisions of the Arizona Motor Vehicle Safety Responsibility Act came into play. Although only one provision of the Arizona Act is relevant to the issue presented by this case, it is appropriate to describe the statutory scheme in some detail. The Arizona statute is based on the Uniform Motor Vehicle Safety Responsibility Act promulgated by the National Conference on Street and Highway Safety.[1] Articles 1 and 2 of the Act deal, respectively, with definitional matters and administration.

The substantive provisions begin in Article 3, which requires the posting of financial security by those involved in accidents. Section 28–1141 of that article requires suspension of licenses for unlawful failure to report accidents, and § 28–1142 provides that within 60 days of the receipt of an accident report the Superintendent of the Motor Vehicle Division of the Highway Department shall suspend the driver's license of the operator and the regis-

[1] See Reviser's Note, Ariz. Rev. Stat. § 28–1101.

tration of the owner of a car involved in an accident "unless such operator or owner or both shall deposit security in a sum which is sufficient in the judgment of the superintendent to satisfy any judgment or judgments for damages resulting from the accident as may be recovered against the operator or owner." Under the same section, notice of such suspension and the amount of security required must be sent to the owner and operator not less than 10 days prior to the effective date of the suspension. This section does not apply if the owner or the operator carried liability insurance or some other covering bond at the time of the accident, or if such individual had previously qualified as a self-insurer under § 28–1222. Other expections to the requirement that security be posted are stated in § 28–1143.[2] If none of these exceptions applies, the suspension continues until: (1) the person whose privileges were suspended deposits the security required under § 28–1142; (2) one year elapses from the date of the accident and the person whose privileges were suspended

[2] Under Ariz. Rev. Stat. § 28–1143 (A), the owner or operator of a car involved in an accident need not post security as required by § 28–1142: (1) if the accident caused injury or damage to no person or property other than the owner's car or the operator's person; (2) if the car was parked when involved in the accident, unless it was parked illegally or did not carry a legally sufficient complement of lights; (3) if the car was being driven or was parked by another without the owner's express or implied permission; (4) if prior to date for suspension the person whose license or registration would be suspended files with the superintendent a release, a final adjudication of nonliability, a confession of judgment, or some other written settlement agreement providing for payment, in installments, of an agreed amount of damages with respect to claims arising from the accident; or (5) if the driver at the time of the accident was driving a vehicle owned, operated, or leased by his employer with the employers' permission; in that case the security and suspension provisions apply only to the owner-employer's registration of vehicles not covered by insurance or other bond. Ariz. Rev. Stat. § 28–1143 (A).

files proof with the superintendent that no one has initiated an action for damages arising from the accident; (3) evidence is filed with the superintendent that a release from liability, an adjudication of nonliability, a confession of judgment, or some other written settlement agreement has been entered.[3] As far as the record in the instant case shows, the provisions of Article 3 were not invoked against petitioners, and the constitutional validity of these provisions is of course not before us for decision.

Article 4 of the Arizona Act, which includes the only provision at issue here, deals with suspension of licenses and registrations for nonpayment of judgments. Interestingly, it is only when the judgment debtor in an automobile accident lawsuit—usually an owner-operator like Mr. Perez—fails to respond to a judgment entered against him that he must overcome two hurdles in order to regain his driving privileges. Section 28–1161, the first section of Article 4, requires the state court clerk or judge, when a judgment[4] has remained unsatisfied for 60 days after entry, to forward a certified copy of the judgment to the superintendent.[5] This was done in the present case, and on March 13, 1968, Mr. and Mrs. Perez

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[3] This section further provides that the superintendent may employ suspension a second time as a means of enforcing payment should there be a default on installment obligations arising under a confession of judgment or a written settlement agreement. Ariz. Rev. Stat. § 28–1144 (3).

[4] Ariz. Rev. Stat. § 28–1102 defines "judgment," for purposes of the Motor Vehicle Safety Responsibility Act, as "any judgment which has become final . . . , upon a cause of action arising out of the ownership, maintenance, or use of a motor vehicle, for damages, . . . or upon a cause of action on an agreement of settlement for such damages."

[5] Under Ariz. Rev. Stat. § 28–1161 (B), a similar notice must also be forwarded to officials in the home State of a nonresident judgment debtor.

were served with notice that their driver's licenses and registration were suspended pursuant to § 28–1162 (A).[6] Under other provisions of Article 4, such suspension is to continue until the judgment is paid,[7] and § 28–1163 (B) specifically provides that "[a] discharge in bankruptcy following the rendering of any such judgment shall not relieve the judgment debtor from any of the requirements of this article." In addition to requiring satisfaction of the judgment debt, § 28–1163 (A) provides that the license and registration "shall remain suspended and shall not be renewed, nor shall any license or registration be thereafter issued in the name of the person, . . . until the person gives proof of financial responsibility" for a future period.[8] Again, the validity of this limited requirement

[6] "A. The superintendent upon receipt of a certified copy of a judgment, shall forthwith suspend the license and registration and nonresident operating privilege of a person against whom the judgment was rendered, except as otherwise provided in this section and § 28–1165."

[7] Ariz. Rev. Stat. § 28–1163 (A). Ariz. Rev. Stat. § 28–1164 defines when a judgment is "paid." Ariz. Rev. Stat. § 28–1165 sets forth a procedure for paying judgments in installments. Ariz. Rev. Stat. § 28–1162 (B) provides that if a creditor consents in writing and the debtor furnishes proof of financial responsibility, see Ariz. Rev. Stat. § 28–1167, the debtor's license and registration may be restored in the superintendent's discretion. After six months, however, the creditor's consent is revocable provided the judgment debt remains unpaid.

[8] Sections 28–1167 through 28–1178 set forth the requirements for various forms of proof. Under § 28–1178, the judgment debtor is apparently able to regain his license and registration to operate a motor vehicle without proof of financial responsibility after three years from the date such proof was first required of him, if during that period the superintendent has not received any notice—and notice can come from other States—of a conviction or forfeiture of bail which would require or permit the suspension or revocation of the driver's license and if the individual is not involved in litigation arising from an accident covered by the security he posted. If the driver required to post financial security did so, and was involved

that some drivers post evidence of financial responsibility for the future in order to regain driving privileges is not questioned here. Nor is the broader issue of whether a State may require proof of financial responsibility as a precondition for granting driving privileges to anyone before us for decision. What is at issue here is the power of a State to include as part of this comprehensive enactment designed to secure compensation for automobile accident victims a section providing that a discharge in bankruptcy of the automobile accident tort judgment shall have no effect on the judgment debtor's obligation to repay the judgment creditor, at least insofar as such repayment may be enforced by the withholding of driving privileges by the State. It was that question, among others, which petitioners raised after suspension of their licenses and registration by filing a complaint in Federal District Court seeking declaratory and injunctive relief and requesting a three-judge court. They asserted several constitutional violations, and also alleged that § 28–1163 (B) was in direct conflict with the Bankruptcy Act and was thus violative of the Supremacy Clause of the Constitution.[9] In support of their complaint, Mr. and Mrs. Perez filed affidavits stating that the suspension of their licenses and registration worked both physical and financial hardship upon them and their children. The District Judge granted the petitioners leave to proceed *in forma pauperis*, but thereafter granted the respondents' motion to dismiss the complaint for failure to state a claim upon which relief could be granted, citing *Kesler* and *Reitz*.[10] The Court of Appeals affirmed, relying on

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as an owner or operator in another accident resulting in personal injury or property damage within one year prior to the date he requests permission to cancel his security, the superintendent may not permit cancellation.

[9] U. S. Const., Art. VI, cl. 2.

[10] Mr. and Mrs. Perez also alleged in their complaint that certain provisions of the Arizona Act imposed involuntary servitude in

the same two decisions. *Perez* v. *Campbell*, 421 F. 2d 619 (CA9 1970). We granted certiorari. 400 U. S. 818 (1970).

I

Deciding whether a state statute is in conflict with a federal statute and hence invalid under the Supremacy Clause is essentially a two-step process of first ascertaining the construction of the two statutes and then determining the constitutional question whether they are in conflict. In the present case, both statutes have been authoritatively construed. In *Schecter* v. *Killingsworth*, 93 Ariz. 273, 380 P. 2d 136 (1963), the Supreme Court of Arizona held that "[t]he Financial Responsibility Act has for its principal purpose the protection of the public using the highways from financial hardship which may result from the use of automobiles by financially irresponsible persons." 93 Ariz., at 280. The Arizona court has consistently adhered to this construction of its legislation, see *Camacho* v. *Gardner*, 104 Ariz. 555, 558, 456 P. 2d 925, 928 (1969); *New York Underwriters Ins. Co.* v. *Superior Court*, 104 Ariz. 544, 456 P. 2d 914 (1969); *Sandoval* v. *Chenoweth*, 102 Ariz. 241, 243, 428 P. 2d 98, 100 (1967); *Farmer* v. *Killingsworth*, 102 Ariz. 44, 47, 424 P. 2d 172, 175 (1967); *Hastings* v. *Thurston*, 100 Ariz. 302, 306, 413 P. 2d 767, 770 (1966); *Jenkins* v. *Mayflower Ins. Exchange*, 93 Ariz. 287, 290, 380 P. 2d 145, 147 (1963), and we are bound by its rulings. See, *e. g.*, *General Trading Co.* v. *State Tax Comm'n*, 322

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violation of the Thirteenth Amendment, and denied Fourteenth Amendment due process and equal protection. They also claimed that portions of the Arizona Act operated as a Bill of Attainder in violation of Article I, § 10, of the Constitution. The District Judge, in refusing to request the convening of a three-judge court, ruled that these constitutional claims were "obviously insubstantial." The Court of Appeals agreed. 421 F. 2d, at 625. Because of our resolution of this case, we express no opinion as to the substantiality of any of petitioners' other constitutional claims.

U. S. 335, 337 (1944). Although the dissent seems unwilling to accept the Arizona Supreme Court's construction of the statute as expressive of the Act's primary purpose [11] and indeed characterizes that construction as

[11] As discussed below, the majorities in *Kesler* and *Reitz* also seemed unwilling to be bound by, or even to look for, state court constructions of the financial responsibility laws before them. See pp. —, *infra*. It is clear, however, from even a cursory examination of decisions in other States that the conclusion of the Arizona Supreme Court as to the purpose of the financial responsibility law is by no means unusual. See, *e. g.*, *Sullivan* v. *Cheatam*, 264 Ala. 71, 76, 84 So. 2d 374, 378 (1956) ("The purpose of the [Motor Vehicle Safety-Responsibility] Act is clearly to require and establish financial responsibility for *every* owner or operator of a motor vehicle 'in any manner involved in an accident.' . . . The Act is designed to protect all persons having claims arising out of highway accidents."); *Escobedo* v. *State Dept. of Motor Vehicles*, 35 Cal. 2d 870, 876, 222 P. 2d 1, 6 (1950) (". . . the state chose to allow financially irresponsible licensed operators to drive until they became involved in an accident with the consequences described in the [financial responsibility law] and their financial irresponsibility was thus brought to the attention of the department, and then to require suspension of their licenses."); *People* v. *Nothaus*, 147 Col. 210, 215–216, 363 P. 2d 180, 183 (1961) ("The requirement of C. R. S. '53, 13–7–7, that the director of revenue, '. . . shall suspend the license of each operator and all registrations of each owner of a motor vehicle in any manner involved in an accident . . .' unless such persons deposit a sum 'sufficient in the judgment of the director . . .' to pay any damage which may be awarded, or otherwise show ability to indemnify the other party to the accident against financial loss, has nothing whatever to do with the protection of the public safety, health, morals or welfare. It is a device designated and intended to bring about the posting of security for the payment of a private obligation without the slightest indication that any legal obligation exists on the part of any person. The public gets no protection whatever from the deposit of such security. This is not the situation which we find in some States where the statutes require public liability insurance as a condition to be met *before a driver's license will issue*. Such a statute protects the public. The statute before us is entirely different. In the matters to which we have particularly directed

unfortunate, *post*, p. ——, a reading of the provisions outlined above leaves the impression that the Arizona Court's description of the statutory purpose is not only logical

attention, C. R. S. '53, 13–7–7, is unconstitutional. On a matter so obviously basic and fundamental no additional citation of authority is required. We reach this conclusion notwithstanding the fact that other jurisdictions have seemingly overlooked basic constitutional guarantees which must be ignored in reaching an opposite conclusion."); *Dempsey* v. *Tynan*, 143 Conn. 202, 208, 120 A. 2d 700, 703 (1956) ("The purpose of the legislature in enacting the financial responsibility provisions . . . was to keep off our highways the financially irresponsible owner or operator of an automobile who cannot respond in damages for the injuries he may inflict, and to require him, as a condition for securing or retaining a registration or an operator's license, to furnish adequate means of satisfying possible claims against him."); *City of St. Paul* v. *Hoffman*, 223 Minn. 76, 77–78, 25 N. W. 2d 661, 662–663 (1947) ("The apparent objective of the safety responsibility act is to provide financial responsibility for injuries and damages suffered in motor vehicle traffic. It seeks to achieve its objective solely by the suspension of license. While its announced purpose is to promote safety of travel, its provisions take effect after an accident happens and subject drivers and owners of vehicles involved to suspension of their 'licenses' unless liability insurance coverage equivalent to that required by the act is carried by the owner or driver of the vehicle. . . . The purpose of the act was to effect financial responsibility to injured persons."); *Rosenblum* v. *Griffin*, 89 N. H. 314, 317–318, 197 A. 701, 704 (1938) ("Two reasons were thought to avail for sustaining such a law. One was its character as a regulation of the use of public highways, and the other was its capacity to secure public safety in dangerous agencies and operations. This latter reason has slight if any evidence for its factual support. Certainly, in the absence of known experience and statistics, it is doubtful whether the insured owner's car, driven either by himself or another, may be considered to be operated more carefully than one whose owner is uninsured. But protection in securing redress for injured highway travelers is a proper subject of police regulation, as well as protection from being injured. It is a reasonable incident of the general welfare that financially irresponsible persons be denied the use of the highway with their cars, regardless of the competency of themselves or others as the drivers."). For legislative statements

but persuasive. The sole emphasis in the Act is one of providing leverage for the collection of damages from drivers who either admit that they are at fault or are adjudged negligent. The victim of another driver's carelessness, if he so desires, can exclude the superintendent entirely from the process of "deterring" a repetition of that driver's negligence.[12] Further, if an

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to the effect that financial responsibility laws are designed to secure compensation for injured victims, see, *e. g.*, Alaska Stat. § 28.20.010 (1962); *Gillaspie* v. *Dept. of Public Safety*, 152 Tex. 459, 463, 259 S. W. 2d 177, 180 (1953) (quoting emergency clause enacted by the Texas Legislature in connection with its financial responsibility law); S. Rep. No. 515, 83d Cong., 1st Sess., 2 (1953) (Report of the Senate Committee on the District of Columbia on the financial responsibility law proposed for the District).

[12] See *Reitz*, *supra*, 314 U. S., at 40–43 (DOUGLAS, J., dissenting).

Under Article 3 of the Arizona Act, dealing with the posting of security for damages arising from a particular accident, the victim may cut the superintendent out by executing a release from liability or agreeing to some other written settlement or confession of judgment providing for payment of some damages, in installments or otherwise. Ariz. Rev. Stat. § 28–1143(A)(4) discussed in n. 2, *supra*. Assuming that such an agreement or confession of judgment providing for installment payments is filed with the superintendent, it prevents him from suspending driving privileges for failure to post the amount of financial security the superintendent determines to be necessary; however, if the careless driver later defaults on one installment, the victim may give notice to the superintendent, who must then use his power of suspension to either coerce full payment or the posting of security. Ariz. Rev. Stat. § 28–1144 (3), discussed in n. 3, *supra*.

Under Article 4, dealing with suspension for nonpayment of a judgment, the victim who has chosen to reduce his claim to judgment maintains substantial control over the suspension of driving privileges if the judgment remains unsatisfied 60 days after entry. He may consent that the judgment debtor's driving privileges not be suspended, but the debtor still must furnish proof of financial responsibility for the future. Ariz. Rev. Stat. § 28–1162 (B); for an argument that a similar provision delegating to judgment creditors the right to choose which careless drivers who do not

accident is litigated and a special verdict that the defendant was negligent and the plaintiff contributorily negligent is entered, the result in Arizona, as in many other States, is that there is no liability for damages arising from the accident. *Heimke* v. *Munoz*, 470 P. 2d 107, 106 Ariz. 26 (1970); *McDowell* v. *Davis*, 104 Ariz. 69, 448 P. 2d 869 (1968). Under the Financial Responsibility Act, the apparent result of such a judgment is that no consequences are visited upon either driver although both have been found to have driven carelessly. See Ariz. Rev. Stat. §§ 28–1143 (A)(4), 28–1144 (3). Moreover, there are no provisions requiring drivers proven to be careless to stay off the roads for a period of time. Nor are there provisions requiring drivers who have caused accidents to attend some kind of driver improvement course, a technique that is not unfamiliar in sentencing for traffic offenses.

Turning to the federal statute, the construction of the Bankruptcy Act is similarly clear. This Court on numerous occasions has stated that "[o]ne of the primary purposes of the bankruptcy act" is to give debtors "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of preexisting debt." *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244 (1934). Accord, *e. g.*, *Harris* v. *Zion's Savings Bank & Trust Co.*, 317 U. S. 447, 451 (1943); *Stellwagen* v. *Clum*, 245 U. S. 605, 617 (1918); *Williams*

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pay judgments shall escape suspension conflicts with the Bankruptcy Act see *Kesler*, *supra*, 369 U. S., at 179–182 (Warren, C. J., dissenting). If the judgment debtor is able to secure a discretionary court order permitting him to pay a judgment in installments under § 28–1165 (A), the creditor may cause suspension of driving privileges until the judgment is fully satisfied by notifying the superintendent of any default in payment of the installments. Ariz. Rev. Stat. § 28–1165 (C). Again, however, the judgment debtor must still give proof of financial responsibility for the future. See Ariz. Rev. Stat. § 28–1165 (B).

v. *United States Fidelity & Guaranty Co.*, 236 U. S. 549, 554–555 (1915). There can be no doubt, given *Lewis* v. *Roberts, supra,* that Congress intended this "new opportunity" to include freedom from most kinds of preexisting tort judgments.

II

With the construction of both statutes clearly established, we proceed immediately to the constitutional question whether a state statute that protects judgment creditors from "financially irresponsible persons" is in conflict with a federal statute that gives discharged debtors a new start "unhampered by the pressure and discouragement of preexisting debt." As early as *Gibbons* v. *Ogden*, 9 Wheat. 1 (1824), Chief Justice Marshall stated the governing principle—that "acts of the State Legislatures . . . , [which] *interfere with,* or are contrary to the laws of Congress, made in pursuance of the constitution," are invalid under the Supremacy Clause. *Id.*, at 211 (emphasis added). Three decades ago MR. JUSTICE BLACK, after reviewing the precedents, wrote in a similar vein that, while "[t]his Court, in considering the validity of state laws in the light of treaties or federal laws touching the same subject, ha[d] made use of the following expressions: conflicting; contrary to; occupying the field; repugnance; difference; irreconcilability; inconsistency; violation; curtailment; and interference[,] . . . [i]n the final analysis," our function is to determine whether a challenged state statute "stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941). Since *Hines* the Court has frequently adhered to this articulation of the meaning of the Supremacy Clause. See, *e. g., Nash* v. *Florida Industrial Comm'n*, 389 U. S. 235, 240 (1967); *Sears, Roebuck & Co.* v. *Stiffel Co.*, 376 U. S. 225, 229 (1964); *Colorado Anti-Discrimination Comm'n* v. *Continental Air Lines, Inc.*,

372 U. S. 714, 722 (1963) (dictum); *Free* v. *Bland*, 369 U. S. 663, 666 (1962); *Hill* v. *Florida*, 325 U. S. 538, 542–543 (1945); *Sola Electric Co.* v. *Jefferson Electric Co.*, 317 U. S. 173, 176 (1942). Indeed, in *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U. S. 132 (1963), a recent case in which the Court was closely divided, all nine Justices accepted the *Hines* test. *Id.*, at 141 (opinion of the Court), 165 (dissenting opinion).

Both *Kesler* [13] and *Reitz*, however, ignored this controlling principle. The Court in *Kesler* conceded that Utah's financial responsibility law left "the bankrupt to some extent burdened by the discharged debt," 369 U. S., at 171, made "it more probable that the debt will be paid despite the discharge," *id.*, at 173, and thereby made "some inroad . . . on the consequences of bankruptcy . . . ." *Id.*, at 171. Utah's statute, in short, frustrated Congress' policy of giving discharged debtors a new start. But the *Kesler* majority was not concerned by this frustration. In upholding the statute, the majority opinion looked not to the effect of the legislation but simply asserted that the statute was "not an Act for the Relief of Mulcted Creditors," *id.*, at 174, and was "not designed to aid collection of debts but to enforce a policy against irresponsible driving . . . ." *Id.*, at 169. The majority, that is, looked to the purpose of the state legislation and upheld it because the purpose was not to circumvent the Bankruptcy Act but to promote highway safety; those in dissent, however, were concerned that, whatever the purpose of the Utah Act, its "plain and inevitable effect [was] to create a

[13] *Kesler* also decided a jurisdictional question, holding that a Supremacy Clause challenge to a state statute was required to be heard by a three-judge district court under 28 U. S. C. § 2281. See 369 U. S., at 155–158. This jurisdictional part of the decision was overruled four years later in *Swift & Co.* v. *Wickham*, 382 U. S. 111, 116 (1965).

powerful weapon for collection of a debt from which [the] bankrupt [had] been released by federal law." *Id.*, at 183. Such a result, they argued, left "the States free . . . to impair . . . an important and historic policy of this Nation . . . embodied in its bankruptcy laws." *Id.*, at 185.

The opinion of the Court in *Reitz* was similarly concerned not with the fact that New York's financial responsibility law frustrated the operation of the Bankruptcy Act, but with the purpose of the law, which was divined as the promotion of highway safety. As the Court said:

> "The penalty which § 94–b imposes for injury due to careless driving is not for the protection of the creditor merely, but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety." 314 U. S., at 37.

The dissenting opinion written by MR. JUSTICE DOUGLAS for himself and three others noted that the New York legislation put "the bankrupt . . . at the creditor's mercy," with the results that "[i]n practical effect the bankrupt may be in as bad, or even worse, a position than if the State had made it possible for a creditor to attach his future wages" and that "[b]ankruptcy . . . [was not] the sanctuary for hapless debtors which Congress intended." *Id.*, at 41.

We can no longer adhere to the aberrational doctrine of *Kesler* and *Reitz* that state law may frustrate the operation of federal law as long as the state legislature in passing its law had some purpose in mind other than one of frustration. Apart from the fact that it is at odds with the approach taken in nearly all our Supremacy Clause cases, such a doctrine would enable state legislatures to nullify nearly all unwanted federal legislation by simply publishing a legislative committee report articulating some state interest or policy—other than frustration of the federal objective—that would be tangentially furthered by the proposed state law. In view of the consequences, we certainly would not apply the *Kesler* doctrine in all Supremacy Clause cases. Although it is possible to argue that *Kesler* and *Reitz* are somehow confined to cases involving either bankruptcy or highway safety, analysis discloses no reason why the States should have broader power to nullify federal law in these fields than in others. Thus, we conclude that *Kesler* and *Reitz* can have no authoritative effect to the extent they are inconsistent with the controlling principle that any state legislation which frustrates the full effectiveness of federal law is rendered invalid by the Supremacy Clause. Section 28–1163 (B) thus may not stand.

III

Even accepting the Supremacy Clause analysis of *Kesler* and *Reitz*—that is, looking to the purpose rather than the effect of state laws—those decisions are not dispositive of this case. Just as *Kesler* went a step beyond *Reitz* and broadened the holding of the earlier case, 369 U. S., at 184 (dissenting opinion), so in the present case the respondents asked the courts below and this Court to expand the holdings of the two previous cases. The distinction between *Kesler* and *Reitz* and this case lies in the State's expressed legislative purpose.

Kesler and *Reitz* were aberrational in their treatment of this question as well. The majority opinions in both cases assumed, without citation of state court authority or any indication that such precedent was unavailable, that the purpose of the state financial responsibility laws there under attack was not provision of relief to creditors but rather deterrence of irresponsible driving. The assumption was, in effect, that all state legislatures which had enacted provisions such as § 28–1163 (B) had concluded that an uninsured motorist about to embark in his car would be more careful on the road if he did not have available what the majority in *Kesler* cavalierly characterized as an "easy refuge in bankruptcy." 369 U. S., at 173.[14] Passing the question of whether the Court gave sufficient attention to binding state interpretations of state legislative purpose and conceding that it employed proper technique in divining as obvious from their face the aim of the state enactments, the present case raises doubts about whether the Court was

[14] It also seems clear that even under the logic of *Kesler* and *Reitz* Mrs. Perez should not have lost her driving privileges. She was not present when the accident occurred, and no act or omission on her part contributed to it. Because the automobile was community property under Arizona law and because judgment was confessed as to her in the Pinkerton negligence action, the Court of Appeals reasoned that loss of Mrs. Perez' license "is the price an Arizona wife must pay for negligent driving by her husband of the community vehicle" when the resulting judgment is not paid. 421 F. 2d, at 624. The *Kesler* and *Reitz* assumption that depriving uninsured motorists of the full relief afforded by a discharge in bankruptcy would prompt careful driving is without foundation when applied to Mrs. Perez. As the Court of Appeals for the Third Circuit has stated in a recent decision involving similar facts:

"Even accepting the fiction that, as applied to drivers, motor vehicle responsibility statutes are intended to promote safety, it is just too much fiction to contend that, applied to a judgment debtor held vicariously liable for the omission of a sub-agent, the statute is anything but a means for the enforcement of judgments." *Miller* v. *Anckaitis*, 436 F. 2d 115, 118 (CA3 1970) (*en banc*).

correct even in its basic assumptions. The Arizona Supreme Court has declared that Arizona's Financial Responsibility Act "has as its principal purpose the protection of the public . . . from financial hardship" resulting from involvement in traffic accidents with uninsured motorists unable to respond to a judgment. *Schecter v. Killingsworth, supra,* 93 Ariz., at 280. The Court in *Kesler* was able to declare, although the source of support is unclear, that the Utah statute could be upheld because it was "not an Act for the Relief of Mulcted Creditors" or a statute "designed to aid collection of debts." 389 U. S., at 169, 174. But here the State urges us to uphold precisely the sort of statute that *Kesler* would have stricken down—one with a declared purpose to protect judgment creditors "from financial hardship" by giving them a powerful weapon with which to force bankrupts to pay their debts despite their discharge. Whereas the acts in *Kesler* and *Reitz* had the effect of frustrating federal law but had, the Court said, no such purpose, the Arizona Act has both that effect and that purpose. Believing as we do that *Kesler* and *Reitz* are not in harmony with sound constitutional principle, they certainly should not be extended to cover this new and distinguishable case.

IV

One final argument merits discussion. The dissent points out that the District of Columbia Code contains an anti-discharge provision similar to that included in the Arizona Act. Motor Vehicle Safety Responsibility Act of the District of Columbia, D. C. Code, § 40–464 (1967 ed.), 68 Stat. 132 (1954). In light of our decision today, the sum of the argument is to draw into question the constitutional validity of the District's anti-discharge section, for as noted in the dissent the Constitution confers upon Congress the power "[t]o establish . . . *uniform* laws on the subject of Bankruptcies throughout the

United States." U. S. Const., Art. II, § 8, cl. 4 (emphasis added). It is asserted that "Congress must have regarded the two statutes as consistent and compatible," *post*, p. —, but such an argument assumes a modicum of legislative attention to the question of consistency. The D. C. Code section does, of course, refer specifically to discharges, but its passage may at most be viewed as evidencing an opinion of Congress on the meaning of the general discharge provision enacted by an earlier Congress and interpreted by this Court as early as 1925. See *Lewis* v. *Roberts*, *supra*. In fact, in passing the initial and amended version of the District of Columbia financial responsibility law, Congress gave no attention to the interaction of the anti-discharge section with the Bankruptcy Act.[15] Moreover, the legislative history is quite clear that when Congress dealt with the subject of financial responsibility laws for the District, it based its

[15] See S. Rep. No. 10, 74th Cong., 1st Sess. (1935); H. R. Rep. No. 208, 74th Cong., 1st Sess. (1935) (both presenting a summary of the provisions of the proposed statute dealing with "Financial Responsibility of Motor Vehicle Operators in the District of Columbia," but failing to mention the fact that a discharge in bankruptcy of an accident judgment would have no effect on suspension of driving privileges for failure to satisfy such judgment); H. R. Rep. No. 799, 74th Cong., 1st Sess. (1935) (Conference Report making no mention of anti-discharge provision); 79 Cong. Rec. 272-273 (1935) (Senate); 79 Cong. Rec. 3416–3417, 4621–4629, 4631–4641, 6556–6564 (1935) (House). Some members of the House, which debated some aspects of the financial responsibility law concept rather extensively in 1935, demonstrated in debate that they were totally unaware of any of the provisions designed to enforce payment of a judgment for injuries caused by the first accident of a financially irresponsible driver. See 79 Cong. Rec. 4624 (1935) (remarks of Congressmen Fitzpatrick and Sisson); *id.*, at 4625 (remarks of Congressman Hull).

When the present District of Columbia financial responsibility law was enacted in 1954, debate was much more limited and the reports of the House and Senate District Committees were quite brief. Except for the reading of the bill, no mention was made of the

work upon the efforts of the uniform commissioners which had won enactment in other States.[16]

Had Congress focused on the interaction between this minor subsection of the rather lengthy financial responsibility act and the discharge provision of the Bankruptcy Act, it would have been immediately apparent to the legislators that the only constitutional method for so defining the scope and effect of a discharge in bankruptcy was by amendment of the Bankruptcy Act, which by its terms is a uniform statute applicable in the States, Territories, and the District of Columbia. 11 U. S. C. § 1 (29). To follow any other course would obviously be to legislate in such a way that a discharge in bankruptcy means one thing in the District of Columbia and something else in the States—depending on state law—a result explicitly prohibited by the uniformity requirement in the constitutional authorization to Congress to enact bankruptcy legislation.

V

From the foregoing, we think it clear that § 28–1163 (B) of the Arizona Financial Responsibility Act is constitutionally invalid. The judgment of the Court of Appeals is reversed and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.

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anti-discharge provision. See S. Rep. No. 515, 83d Cong., 1st Sess. (1953); H. R. Rep. No. 1448, 83d Cong., 2d Sess. (1954); 99 Cong. Rec. 8950–8951 (1953); 100 Cong. Rec. 6281–6287, 6347–6348 (1954).

[16] H. R. Rep. No. 10, 74th Cong., 1st Sess., 3 (1935); S. Rep. No. 208, 74th Cong., 1st Sess. 3 (1935); 79 Cong. Rec. 4626–4627 (1935) (remarks of Congresswoman Norton, chairman of the House District Committee). In reference to the present version of the financial responsibility act, see S. Rep. No. 515, 83d Cong., 1st Sess., 1 (1953); H. R. Rep. No. 148, 83d Cong., 2d Sess., 2 (1954); 100 Cong. Rec. 6287 (1954) (remarks of Congressman Talle); *id.*, at 6347 (remarks of Senator Beall).

SUPREME COURT OF THE UNITED STATES

No. 5175.—October Term, 1970

Adolfo Perez, et ux., Petitioners,
v.
David H. Campbell, Superintendent, Motor Vehicle Division, Arizona Highway Department, et al.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit.

[June 1, 1971]

Mr. Justice Blackmun, joined by The Chief Justice, Mr. Justice Harlan, and Mr. Justice Stewart.

I concur in the result as to petitioner Emma Perez and dissent as to petitioner Adolfo Perez.

I

The slaughter on the highways of this Nation exceeds the death toll of all our wars.[1] The country is fragmented about the current conflict in Southeast Asia, but I detect little genuine public concern about what takes place in our very midst and on our daily travel routes. See *Tate* v. *Short*, 401 U. S. —, — (1971).

This being so, it is a matter of deep concern to me that today the Court lightly brushes aside and overrules two cases where it had upheld a representative attempt by the States to regulate traffic and where the Court had considered and rejected the very Supremacy Clause argument that it now discovers to be so persuasive.[2]

[1] See Appendix to this opinion p. 17.

[2] The petitioners urge upon us only the Supremacy Clause.

II

I think it is desirable to stress certain factual details. The facts, of course, are only alleged, but for purposes of the motion to dismiss, we are to accept them as true. *Cooper* v. *Pate*, 378 U. S. 546 (1964).

Arizona is a community property state. Adolfo and Emma Perez are husband and wife. They were resident citizens of Arizona at the time of the accident in Tucson in July 1965. Mr. Perez was driving an automobile registered in his name. He was alone. Mrs. Perez was not with him and had nothing to do with her husband's operation of the car on that day. The automobile, however, was the property of the marital community.

Accompanying, and supposedly supportive of, the Perez complaint in the present suit, were affidavits of Mr. and Mrs. Perez. These affidavits asserted that the Perezes had four minor children ages 6 to 17; that Emma is a housewife and not otherwise gainfully employed; that Emma's inability to drive has required their two older children, aged 17 and 14, to walk one and a half miles to high school and the third child, aged 9, one mile to elementary school, with consequent nose-bleeding; that Emma's inability to drive has caused inconvenience and financial injury; and that Adolfo's inability to drive has caused inconvenience because he must rely on others for transportation or use public facilities or walk.

III

The Statutory Plan

Arizona has a comprehensive statutory plan for the regulation of vehicles upon its highways. Ariz. Rev. Stat. Ann. Tit. 28. Among the State's efforts to assure responsibility in this area of increasing national concern are its Uniform Motor Vehicle Operators' and Chauffeurs'

License Act (c. 4), its Uniform Act Regulating Traffic on Highways (c. 6), and its Uniform Motor Vehicle Safety Responsibility Act (c. 7).[3]

The challenged § 28–1163.B is a part of the Motor Vehicle Safety Responsibility Act. The Act's provisions are not unfamiliar. There is imposed upon the Motor Vehicle Division Superintendent the duty to suspend the license of each operator, and the registration of each owner, of a motor vehicle involved in an accident resulting in bodily injury or death or property damage to any one person in excess of $100, except, among other situations, where proof of financial responsibility, as by the deposit of appropriate security or by the presence of a liability policy of stated minimum coverage, is afforded. §§ 28–1142, 28–1143, and 28–1167. The suspension, once imposed, remains until the required security is deposited or until one year has elapsed and no action for damages has been instituted. § 28–1144. If the registrant or operator fails, within 60 days, to satisfy an adverse motor vehicle final judgment, as defined in § 28–1102.2, the court clerk has the duty to notify the Superintendent and the latter to suspend the license and registration of the judgment debtor. §§ 28–1161.A and 28–1162.A. But if the judgment creditor consents in writing that the debtor be allowed to retain his license and registration, the Superintendent in his discretion may grant that privilege. § 28–1162.B. Otherwise the suspension remains in effect until the judgment is satisfied. § 1163.A. Payments of stated amounts are deemed to satisfy the judg-

[3] In 1943 some of the motor vehicle uniform laws were "withdrawn from active promulgation pending further study" by the National Conference of Commissioners on Uniform State Laws. 9B U. L. A. Table III, xix, xxii, xxiii. See Mr. Justice Frankfurter's detailed review of the development of state legislation and of the uniform laws in this field in *Kesler* v. *Department of Public Safety*, 369 U. S. 153, 158–168 (1962).

ment, § 28–1164, and court-approved installment payment of the judgment will preserve the license and registration, § 22–1165.

IV

Adolfo Perez

Inasmuch as the case is before us on the defendants' motion to dismiss the Perez complaint that alleged Adolfo's driving alone, the collision, and the judgment in favor of the Pinkertons, it is established, for present purposes, that the Pinkerton judgment was based on Adolfo's negligence in driving the Perez vehicle.

Adolfo emphasizes, and I recognize, that under Article I, § 8, cl. 4 of the Constitution, Congress has possessed the power to establish "uniform Laws on the subject of Bankruptcies throughout the United States"; that, of course, this power, when exercised, as it has been since 1898, is "exclusive," *New Lamp Chimney Co.* v. *Ansonia Brass and Copper Co.*, 91 U. S. 656, 661 (1875), and "unrestricted and paramount," *International Shoe Co.* v. *Pinkus*, 278 U. S. 261, 265 (1929); that one of the purposes of the Bankruptcy Act is to "relieve the honest debtor from the weight of oppressive indebtedness and to permit him to start afresh . . . ," *Williams* v. *United States Fidelity and Guaranty Co.*, 236 U. S. 549, 554–555 (1915); and that a bankrupt by his discharge receives "a new opportunity in life and a clear field for future effort, unhampered by the pressure and discouragement of pre-existing debt," *Local Loan Co.* v. *Hunt*, 292 U. S. 234, 244 (1934).

From these general and accepted principles it is argued that § 28–1163.B, with its insistence upon post-discharge payment as a condition for license and registration restoration, is violative of the Bankruptcy Act and, thus, of the Supremacy Clause.

As Mr. Perez acknowledges in his brief here, the argument is not new. It was raised with respect to a New York statute in *Reitz* v. *Mealey*, 314 U. S. 33 (1941), and was rejected there by a five-to-four vote:

> ". . . The penalty which § 94–b imposes for injury vehicles, with its consequent dangers, renders the reasonableness and necessity of regulation apparent. The universal practice is to register ownership of automobiles and to license their drivers. Any appropriate means adopted by the states to insure competence and care on the part of its licensees and to protect others using the highway is consonant with due process. . . .
>
> . . . . . .
>
> ". . . The use of the public highways by motor due to careless driving is not for the protection of the creditor merely, but to enforce a public policy that irresponsible drivers shall not, with impunity, be allowed to injure their fellows. The scheme of the legislation would be frustrated if the reckless driver were permitted to escape its provisions by the simple expedient of voluntary bankruptcy, and, accordingly, the legislature declared that a discharge in bankruptcy should not interfere with the operation of the statute. Such legislation is not in derogation of the Bankruptcy Act. Rather it is an enforcement of permissible state policy touching highway safety." 314 U. S. at 36–37.

Left specifically unanswered in that case, but acknowledged as a "serious question," 314 U. S. at 38, was the claim that interim amendments of the statutes gave the creditor control over the initiation and duration of the suspension and thus violated the Bankruptcy Act. The dissenters, speaking through MR. JUSTICE DOUGLAS, concluded that that constitutional issue "cannot be es-

caped . . . unless we are to overlook the realities of collection methods." 314 U. S. at 43.

Nine years ago, the same argument again was advanced, this time with respect to Utah's Motor Vehicle Safety Responsibility Act, and again was rejected. *Kesler* v. *Department of Public Safety*, 369 U. S. 153, 158–174 (1962). There, Utah's provisions relating to duration of suspension and restoration, more stringent than those of New York, were challenged. It was claimed that the statutes made the State a "collecting agent for the creditor rather than furthering an interest in highway safety," and that suspension that could be perpetual "only renders the collection pressure more effective." 369 U. S. at 169. There was a troublesome jurisdictional issue in the case, the decision as to which was later overruled, *Swift & Co.* v. *Wickham*, 382 U. S. 111, 124–129 (1965), but on the merits the Court, by a five-to-three vote, sustained all the Utah statutes then under attack:[4]

> ". . . But the lesson *Zavelo* [v. *Reeves*, 227 U. S. 625 (1913)] and *Spalding* [v. *New York ex. rel. Backus*, 4 How. 21 (1846)] teach is that the Bankruptcy Act does not forbid a State to attach any consequence whatsoever to a debt which has been discharged.
>
> "The Utah Safety Responsibility Act leaves the bankrupt to some extent burdened by the discharged debt. Certainly some inroad is made on the consequences of bankruptcy if the creditor can exert pressure to recoup a discharged debt, or part of it, through the leverage of the State's licensing and registration power. But the exercise of this power is deemed vital to the State's well-being, and, from

[4] Mr. Chief Justice Warren, dissenting in part, would have upheld the Utah statutes other than that "which gives to a creditor the descretion of determining if and when driving privileges may be restored by the State . . . ." 369 U. S., at 179–182.

the point of view of its interests, is wholly unrelated to the considerations which propelled Congress to enact a national bankruptcy law. There are here overlapping interests which cannot be uncritically resolved by exclusive regard to the money consequences of enforcing a widely adopted measure for safeguarding life and safety.

". . . At the heart of the matter are the complicated demands of our federalism.

"Are the differences between the Utah statute and that of New York so significant as to make a constitutionally decisive difference? A State may properly decide, as forty-five have done, that the prospect of a judgment that must be paid in order to regain driving privileges serves as a substantial deterrent to unsafe driving. We held in *Reitz* that it might impose this requirement despite a discharge, in order not to exempt some drivers from appropriate protection of public safety by easy refuge in bankruptcy. . . . To whatever extent these provisions make it more probable that the debt will be paid despite the discharge, each no less reflects the State's important deterrent interest. Congress had no thought of amending the Bankruptcy Act when it adopted this law for the District of Columbia; we do not believe Utah's identical statute conflicts with it either.

"Utah is not using its police power as a devious collecting agency under the pressure of organized creditors. Victims of careless car drivers are a wholly diffused group of shifting and uncertain composition, not even remotely united by a common financial interest. The Safety Responsibility Act is not an Act for the Relief of Mulcted Creditors. It is not directed to bankrupts as such. Though in a particular case a discharged bankrupt who wants to have

his rightfully suspended license and registration restored may have to pay the amount of a discharged debt, or part of it, the bearing of the statute on the purposes served by bankruptcy legislation is essentially tangential." 369 U. S. at 170–174 (footnotes omitted).

MR. JUSTICE BLACK, joined by MR. JUSTICE DOUGLAS, dissented on the ground that Utah Code Ann. § 41.12.15 (1953), essentially identical to Arizona's § 28–1163.B, operated to deny the judgment debtor the federal immunity given him by § 17 of the Bankruptcy Act and, hence, violated the Supremacy Clause. 369 U. S., at 182–185.

The Perezes in their brief, p. 7, acknowledge that the Arizona statutes challenged here "are not unlike the Utah ones discussed in Kesler." Accordingly, Adolfo Perez is forced to urge that *Reitz* and the remaining portion of *Kesler* that bears upon the subject be overruled. The Court bows to that argument.

I am not prepared to overrule those two cases and to undermine their control over Adolfo Perez' posture here. I would adhere to the rulings and I would hold that the States have an appropriate and legitimate concern with highway safety; that the means Arizona has adopted with respect to one in Adolfo's position (that is, the driver whose negligence has caused harm to others and whose judgment debt based on that negligence remains unsatisfied) in its attempt to assure driving competence and care on the part of its licensees, as well as to protect others, is appropriate state legislation; and that the Arizona statute, like its Utah counterpart, despite the tangential effect upon bankruptcy, does not operate in derogation of the Bankruptcy Act or conflict with it to the extent it may rightly be said to violate the Supremacy Clause.

Other factors of significance are also to be noted:

1. The Court struggles to explain away the parallel District of Columbia situation installed by Congress itself. Section 40–464 of the D. C. Code (1967 ed.) in all pertinent parts is identical with Arizona's § 28–1163.B. The only difference is in the final word, namely, "article" in the Arizona statute and "chapter" in the District's. The District of Columbia statute was enacted as § 48 of Public Law 365 of May 25, 1954, effective one year later, 68 Stat. 120, 132. This is long after the Bankruptcy Act was placed on the books and, indeed, long after this Court's decision in *Lewis* v. *Roberts*, 267 U. S. 467 (1925), that a personal injury judgment is a provable claim in bankruptcy. Surely, as the Court noted in *Kesler*, 369 U. S., at 173–174, "Congress had no thought of amending the Bankruptcy Act when it adopted this law for the District of Columbia." See *Lee* v. *England*, 206 F. Supp. 957 (DC 1962). Congress must have regarded the two statutes as consistent and compatible, and cannot have thought otherwise for the last 35 years.[5] If the statutes truly are in tension, then I would suppose that the later one, that is, § 40–464, would be the one to prevail. *Gibson* v. *United States*, 194 U. S. 182, 192 (1904). But, if so, we then have something less than the "uniform Laws on the subject of Bankruptcies throughout the United States" that Article II, § 8, cl. 4, of the Constitution commands, for the law would be one way in Arizona (and, by the present overruling of *Reitz* and *Kesler*, in New York and in Utah) and the other way in the District of

[5] Public Law 365 replaced the Act of May 3, 1935, 49 Stat. 166, known as the Owners' Financial Responsibility Act of the District of Columbia. Section 3 of the earlier Act provided, 49 Stat. 167, that a judgment's discharge in bankruptcy, as distinguished from other discharge, would not relieve the judgment debtor from suspension.

Columbia. Unfortunately, such is the dilemma in which the Court's decision today leaves us.

2. Arizona's § 28–1163.B. also has its counterparts in the statutes of no less than 44 other States.[6] It is, after all, or purports to be, a *uniform* Act. I suspect the Court's decision today will astonish those members of the

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[6] Ala. Code Tit. 36, § 74(55) (1959); Alaska Stat. § 28.20.330 (1962); Ark. Stat. Ann. § 75–1457 (1957); Cal. Vehicle Code § 16372 (West 1960); Colo. Rev. Stat. Ann. § 13–7–5 (2) (1964); Conn. Gen. Stat. Rev. § 14–131 (1966); Del. Code Ann. Tit. 21, § 2943 (1953); Hawaii Rev. Stats. § 287–17 (1968); Idaho Code § 49–1514 (1967); Ill. Ann. Stat. c. 95 1/2, § 7A–310 (1970 Supp.); Iowa Code Ann. § 321A.14 (2) (1966); Kan. Stat. Ann. § 8–744 (b) (1964); Ky. Rev. Stat. Ann. § 187.420 (1963); La. Rev. Stat. Ann. § 32:893 (West 1963); Me. Rev. Stat. Ann. Tit. 29, § 783 (1965) (10 years); Md. Ann. Code Art. 66 1/2, § 119 (1)(e) (1967); Mich. Stat. Ann. § 9.2213 (b) (1968); Minn. Stat. Ann. § 170.33 subd. 5 (Supp. 1971); Miss. Code Ann. § 8285–14 (1957); Mo. Ann. Stat. § 303.110 (1963); Mont. Rev. Codes Ann. § 53–431 (1961); Neb. Rev. Stat. § 60–519 (1968); Nev. Rev. Stat. § 485.303 (1968); N. H. Rev. Stat. Ann. § 268:9 (1966); N. J. Stat. Ann. § 39:6–35 (Supp. 1970); N. M. Stat. Ann. § 64–24–78 (1960); N. Y. Veh. & Traf. Law § 337 (e) (McKinney 1970); N. C. Gen. Stat. § 20–279.14 (Supp. 1969); N. D. Cent. Code § 39–16.1–04.5 (1969 Supp.); Ohio Rev. Code Ann. § 4509.43 (1970 Supp.); Okla. Stat. Ann. Tit. 47, § 7–315 (1962); Pa. Stat. Ann. Tit. 75, § 1414 (1960); R. I. Gen. Laws Ann. § 31–32–15 (1969); S. C. Code Ann. § 46–748 (Supp. 1960); S. D. Comp. Laws Ann. § 32–35–58 (1967); Tenn. Code Ann. § 59–1236 (1968); Tex. Rev. Civ. Stat. Ann. Art. 6701h, § 14 (b) (1969); Utah Code Ann. § 41–12–15 (1953); Vt. Stat. Ann. Tit. 23, § 802 (b) (1967); Va. Code Ann. § 46.1–444 (a)(4) (Supp. 1970) (15 years); Wash. Rev. Code Ann. § 46.29.380 (1967); W. Va. Code Ann. § 17D–4–6 (1966); Wis. Stat. Ann. § 344.26 (2) (1958) [cf. *Zyuricke* v. *Brogli*, 130 N. W. 2d 180, 24 Wis. 2d 685 (1964)]; Wyo. Stat. Ann. § 31–299 (1967).

See also Fla. Stat. Ann. § 324.131 (1968) and Op. Atty. Gen. 059–200 (1959); Ga. Code Ann. § 92A–605 (e)(3) (Supp. 1970); Ind. Stat. Ann. § 47–1049 (1965) and Op. Atty. Gen. 1936, p. 272; Mass. Gen. Laws Ann. c. 90, § 22A (1969); Oreg. Rev. Stats. § 486.211 (5) (1968).

Congress who were responsible for the District of Columbia Code provision, and will equally astonish the legislatures of those 44 States that absorbed assurance from *Reitz* and *Kesler* that the provision withstands constitutional attack.

3. The Court rationalizes today's decision by saying that *Kesler* went beyond *Reitz* and that the present case goes beyond *Kesler*, and that that is too much. It would justify this by noting the Arizona Supreme Court's characterization of the Arizona statute as one for the protection of the public from financial hardship and by concluding, from this description, that the statute is not a public highway safety measure, but rather a financial one protective, I assume the implication is, of insurance companies. The Arizona court's characterization of its statute, I must concede, is not a fortunate one. However, I doubt that that court, in evolving that description, had any idea of the consequences to be wrought by this Court's decision today. I am not willing to say that the description in *Schecter* v. *Killingsworth*, 93 Ariz. 273, 380 P. 2d 136 (1963), embraced the only purpose of the State's legislation. Section 28–1163.B. is a part of the State's Motor Vehicle *Safety* Responsibility Act and does not constitute an isolated subchapter of that Act concerned only with financial well-being of the victims of drivers' negligence. In any event, as the Court's opinion makes clear, the decision today would be the same however the Arizona court had described its statute.

4. While *stare decisis* "is no immutable principle," [1] as a glance at the Court's decisions over the last 35 years, or over almost any period for that matter, will disclose, it seems to me that the principle does have particular validity and application in a situation such as the one

[1] Mr. Justice Douglas, dissenting, in *Swift & Co.* v. *Wickham*, 382 U. S. at 133.

confronting the Court in this case. Here is a statute concerning motor vehicle responsibility, a substantive matter peculiarly within the competence of the State rather than the National Government. Here is a serious and conscientious attempt by a State to legislate and do something about the problem that, in terms of death and bodily injury and adverse civilian effect, is so alarming. Here is a statute widely adopted by the several States and legitimately assumed by the lawmakers of those States to be consistent with the Bankruptcy Act, an assumption rooted in positive, albeit divided, decision by this Court, not once, but twice. And here is a statute the Congress itself, the very author of the Bankruptcy Act, obviously considered consistent therewith. I fear that the Court today makes *stare decisis* meaningless and downgrades it to the level of a tool to be used or cast aside as convenience dictates. I doubt if Justices Roberts, Stone, Reed, Frankfurter, Murphy, Warren, Clark, HARLAN, BRENNAN, and STEWART, who constituted the respective majorities on the merits in *Reitz* and *Kesler*, were all that wrong.

5. Adolfo's affidavit protestation of hardship goes no further than to assert a resulting reliance upon friends and neighbors or upon public transportation or upon walking to cover the seven miles from his home to his place of work; this is inconvenience, perhaps, even in this modern day when we are inclined to equate convenience with necessity and to eschew what prior generations routinely accepted as part of the day's labor, but it falls far short of the "great harm" and "irreparable injury" which he otherwise asserts only in general and conclusory terms. Perez' professed inconvenience stands vividly and starkly in contrast with his victims' injuries. But as is so often the case, the victim, once damaged, is seemingly beyond concern. What seems to become important is the perpetrator's inconvenience.

6. It is conceded that Arizona constitutionally could prescribe liability insurance as a condition precedent to the issuance of a license and registration.

V

Emma Perez

Emma Perez' posture is entirely different. Except for possible emotional strain resulting from her husband's predicament, she was in no way involved in the Pinkerton accident. She was not present when it occurred and no negligence or nonfeasance on her part contributed to it. Emma thus finds herself in a position where, having done no wrong, she nevertheless is deprived of her operator's license. This comes about because the Perez vehicle concededly was community property under § 25–211.A, and because, for some reason, the judgment was confessed as to her as well as against her husband. As one *amicus* brief describes it, Emma, a fault-free driver, "is without her license solely because she is the impecunious wife of an impecunious, negligent driver in a community property state."

At this point a glance at the Arizona community property system perhaps is indicated. Emma Perez was a proper nominal defendant in the Pinkerton lawsuit, see *Donato* v. *Fishburn*, 90 Ariz. 210, 367 P. 2d 245 (1961), but she was not a necessary party there. *First National Bank* v. *Reeves*, 27 Ariz. 508, 517, 234 P. 556, 560 (1925); *Bristol* v. *Moser*, 55 Ariz. 185, 190–191, 99 P. 2d 706, 709 (1940). However, a judgment against a marital community based upon the husband's tort committed without the wife's knowledge or consent does not bind her separate property. *Ruth* v. *Rhodes*, 66 Ariz. 129, 138, 185 P. 2d 304, 310 (1947). The judgment would, of course, bind the community property vehicle to the extent permitted by Arizona law. See § 33–1124.

In Arizona during coverture personal property may be disposed of only by the husband. § 25–211.B. The community personalty is subject to the husband's dominance in management and control. *Mortensen* v. *Knight*, 81 Ariz. 325, 334, 305 P. 2d 463, 469 (1957). The wife has no power to make contracts binding the common property. § 25–214.A. Her power to contract is limited to necessaries for herself and the children. § 25–215. Thus, as the parties appear to agree, she could neither enter into a contract for the purchase of an automobile nor acquire insurance upon it except by use of her separate property.

The Court of Appeals ruled that Mrs. Perez' posture, as the innocent wife who had no connection with the negligent conduct that led to the confession and entry of judgment, was, under the logic of *Kesler* and *Reitz*, "a distinction without a significant difference" even though "she had no alternative." 421 F. 2d at 622–623. The court opined that the spouse can acquire an automobile with her separate funds and that negligent operation of it on separate business would then not call into question the liability of the other spouse. It described Emma's legal status as "closely analogous" to that of the automobile owner who permits another person to drive, and it regarded as authority cases upholding a State's right to revoke the owner's license and registration after judgment had been entered against him and remains unsatisfied. The husband was described, under Arizona law, as the managing agent of the wife in the control of the community automobile, and "the driver's licenses of both husband and wife are an integral part of the ball of wax, which is the basis of the Arizona community property laws." The loss of her license "is the price an Arizona wife must pay for negligent driving by her husband of the community vehicle" when the resulting judgment is not paid. 421 F. 2d at 624.

For what it is worth, Emma's affidavit is far more persuasive of hardship than Adolfo's. She relates the family automobile to the children and their medical needs and to family purchasing at distant discount stores. But I need not, and would not, decide her case on the representations in her affidavit.

I conclude that the reasoning of the Court of Appeals, in its application to Emma Perez and her operator's license, does not comport with the purpose and policy of the Bankruptcy Act and that it effects a result at odds with the Supremacy Clause. Emma's subordinate position with respect to the community's personal property, and her complete lack of connection with the Pinkerton accident and with the negligence that occasioned it, are strange accompaniments for the deprival of her operator's license. The nexus to the state police power, claimed to exist because of her marriage to the negligent Adolfo and the community property character of the accident vehicle, is, for me, elusive and unconvincing. The argument based on Arizona's appropriate concern with highway safety, that prompts me to adhere to the *Reitz-Kesler* rationale for Adolfo, is drained of all force and persuasion when applied to the innocent Emma. Despite the underlying community property legal theory, Emma had an incident of ownership in the family automobile only because it was acquired during coverture. She had no "control" over Adolfo's use of the vehicle and she could not forbid his use as she might have been able to do were it her separate property. Thus, the state purpose in deterring the reckless driver and his unsafe driving has only undeserved punitive application to Emma. She is personally penalized not only with respect to the operation of the Perez car but with respect to any automobile.

I therefore would hold that under these circumstances the State's action, under § 28–1163.B, in withholding from

Emma her operator's license is not, within the language of *Reitz*, an appropriate means for Arizona "to insure competence and care on the part of [Emma] and to protect others" using the highways, 314 U. S., at 36, and that it interferes with the paramount federal interest in her bankruptcy discharge and violates the Supremacy Clause.

MOTOR-VEHICLE DEATHS AND WAR DEATHS

From 1900 through 1969, motor-vehicle deaths in the U. S. totalled nearly 1,800,000. Deaths of U. S. military personnel in all wars are shown below. In making comparisons, it must be kept in mind that nearly everyone is exposed to motor-vehicle accidents but relatively few are exposed to war deaths.

U. S. MILITARY CASUALTIES IN PRINCIPAL WARS

War	Deaths			Nonfatal Wounds
	Total	Battle	Others*	
Total	†1,146,000	643,052	†503,200	§1,540,000
Revolutionary War (1775–83)	4,435	4,435	N.A.	6,188
War of 1812 (1812–15)	2,260	2,260	N.A.	4,505
Mexican War (1846–48)	13,283	1,733	11,550	4,152
Civil War (1861–65)	364,511	140,414	224,097	281,881
Union Forces	133,821	74,524	59,297	N.A.
Confederate Forces	2,446	385	2,061	1,662
Spanish-American War (1898)	116,708	53,513	63,195	204,002
World War I (1917–18)	407,316	292,131	115,185	670,846
World War II (1941–45)	54,246	33,629	20,617	103,284
Korean War (1950–53)	47,251	40,028	7,223	262,799
Viet Nam War (1961–69)				

Source: Office of Secretary of Defense.
*Includes deaths from disease, accidents, etc.
†Rounded.
§Incomplete and rounded. N. A. Not available.

Accident Facts (1970 ed.), p. 63, published by the National Safety Council.

The same publication, page 59, discloses that the annual death toll for motor vehicle accidents in the United States has exceeded 52,000 in each of the last five calendar years. Thus, the *annual* motor vehicle carnage approximates the *total* number of lives lost during the entire Vietnam conflict beginning in 1961.